

TITLE 329 SOLID WASTE MANAGEMENT BOARD

NOTE: Under P.L.1-1996, SECTION 99, IC 13-1, IC 13-3, IC 13-5, IC 13-6, IC 13-7, IC 13-9, IC 13-9.5, and IC 13-10 were repealed. The repeal of these cites affects statutory authority and statutes affected lines of all sections not amended in the 2003 Edition of the Indiana Administrative Code.

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Provisions Applicable Throughout Title 329

329 IAC 1-1-1 Applicability of rule

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3

Sec. 1. This rule (329 IAC 1-1) is applicable to all of Title 329 IAC. *(Solid Waste Management Board; 329 IAC 1-1-1; filed May 31, 1988, 2:42 p.m.: 11 IR 3199; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233)*

329 IAC 1-1-2 Severability

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3; IC 13-14-8

Sec. 2. If any provision of these rules (329 IAC) or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect any other provision or application of these rules (329 IAC) which can be given effect without the invalid provision or application. *(Solid Waste Management Board; 329 IAC 1-1-2; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233)*

329 IAC 1-1-3 Savings clause

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3; IC 13-14-8

Sec. 3. The repeal and reenactment in this Title (329 IAC) of any rule previously the responsibility of the Solid Waste Management Board, the Environmental Management Board, or the Stream Pollution Control Board shall not have the effect to release or extinguish any penalty or forfeiture incurred under the same, and such previous rule shall be treated as still remaining on in force for the purpose of sustaining any proper action, or prosecution for the enforcement of such penalty, forfeiture or liability. *(Solid Waste Management Board; 329 IAC 1-1-3; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233)*

329 IAC 1-1-4 Reference to federal acts

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3; IC 13-14-8

Sec. 4. (a) Unless otherwise indicated, references in these rules (329 IAC) to the Resource Conservation and Recovery Act (RCRA) shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984, as amended, 4 U.S.C. §6901, et seq. Unless otherwise indicated, references in these rules (329 IAC) to the Comprehensive Environmental Response, Compensation and Liability Act (CERLA) [*sic.*, (CERCLA)] shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. §9601, et seq. Unless otherwise indicated, references in these rules (329 IAC) to the Toxic Substances Control Act as amended by the Asbestos Hazard Emergency Response Act of 1986, as amended, 15 U.S.C. §2601 et seq.

(b) Unless otherwise indicated, as in 329 IAC 3.1, references to the Code of Federal Regulation [*sic.*] (CFR) shall mean the 1987 version. *(Solid Waste Management Board; 329 IAC 1-1-4; filed May 31, 1988, 2:42 p.m.: 11 IR 3200; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 233)*

ARTICLE 1.5. REFUSE DISPOSAL ACT; SOLID WASTE MANAGEMENT PERMITS; INDUSTRIAL WASTE HAULER PERMITS (REPEALED)

(Repealed by Solid Waste Management Board; filed Nov 10, 1988, 5:15 p.m., incorporated matters filed Dec 7, 1988, 11:00 a.m., refiled Jan 11, 1989, 1:00 p.m.: 12 IR 1183; errata filed Mar 17, 1989, 3:10 p.m.: 12 IR 1636)

ARTICLE 2. SOLID WASTE MANAGEMENT (REPEALED)

(Repealed by Solid Waste Management Board; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1970)

ARTICLE 2.5. DISTRICT PLANNING REVOLVING LOAN FUND (REPEALED)

(Repealed by Solid Waste Management Board; filed Apr 28, 1997, 4:00 p.m.: 20 IR 2372)

ARTICLE 3. HAZARDOUS WASTE MANAGEMENT PERMIT PROGRAM AND RELATED HAZARDOUS WASTE MANAGEMENT REQUIREMENTS (REPEALED)

(Repealed by Solid Waste Management Board; filed Jan 24, 1992, 2:00 p.m.: 15 IR 1002)

ARTICLE 3.1. HAZARDOUS WASTE MANAGEMENT PERMIT PROGRAM AND RELATED HAZARDOUS WASTE MANAGEMENT

Rule 1. General Provisions

329 IAC 3.1-1-1 Purpose

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7

Sec. 1. The purpose of this article is to establish policies, procedures, requirements, and standards to implement the environmental management laws as defined at IC 13-11-2-71. This article is being promulgated for the purpose of protecting and enhancing the quality of Indiana's environment and protecting the public health, safety, and well-being of its citizens. This article establishes a hazardous waste management program consistent with the requirements of the Resource Conservation and Recovery Act (P.L.94-580, 42 U.S.C. 6901 et seq.), as amended (hereinafter referred to as RCRA), and regulations promulgated pursuant to RCRA. (40 CFR 260 through 40 CFR 270, 42 U.S.C. 6901 et seq.) *(Solid Waste Management Board; 329 IAC 3.1-1-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-2 Scope

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5

Sec. 2. This article establishes standards for identifying hazardous waste as well as standards for hazardous waste management procedures for generators, transporters, and owners and operators of hazardous waste facilities previously regulated under 329 IAC 3. This article also replaces the permit program for hazardous waste facilities, which were regulated by 329 IAC 3. Any reference in this article to standards, procedures, and requirements of 40 CFR 260 through 40 CFR 270 shall constitute the full adoption by reference of the part, subpart, and paragraph so referenced including any notes and appendices as may be associated, unless otherwise stated. *(Solid Waste Management Board; 329 IAC 3.1-1-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-3 Right of entry

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7

Sec. 3. The department, or its authorized representative, upon presentation of proper credentials, or by directive of the board,

shall have a right to enter upon, to, or through public or private premises, subject to this article, to investigate, take samples, copy all records related to hazardous waste, and inspect for compliance with the requirements imposed under environmental management laws as defined at IC 13-11-2-71, or this article, or to determine whether a violation or threatened violation exists, in accordance with any or all of the following purposes:

(1) For the purpose of determining whether any person is subject to the requirements of environmental management laws as defined at IC 13-11-2-71, or whether any person subject to the requirements of environmental management laws as defined at IC 13-11-2-71 is in compliance with this article.

(2) For the purpose of investigating conditions relating to hazardous waste management or hazardous waste management practices where the commissioner has a reasonable belief that a violation of environmental management laws as defined at IC 13-11-2-71 or this article is occurring or is about to occur.

(3) For the purpose of determining whether there has been a violation of any of the provisions of environmental management laws as defined at IC 13-11-2-71, this article, or any permit or order issued pursuant to environmental management laws as defined at IC 13-11-2-71 or this article.

(Solid Waste Management Board; 329 IAC 3.1-1-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-1-4 Conduct of inspection and sampling

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5

Sec. 4. Each investigation or inspection shall be completed with reasonable promptness. If the commissioner's authorized representative obtains any sample prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt identifying the sample obtained and, if requested, a portion of the sample equal in volume or weight to the portion retained. If any analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge. *(Solid Waste Management Board; 329 IAC 3.1-1-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-5 Enforcement

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 4-21.5; IC 13-7

Sec. 5. The administration and enforcement of this article shall be in accordance with IC 13-30-3 and IC 4-21.5. *(Solid Waste Management Board; 329 IAC 3.1-1-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-6 Penalties

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7

Sec. 6. Penalties for violations of this article are as outlined in IC 13-7. *(Solid Waste Management Board; 329 IAC 3.1-1-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4

Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, 2001. When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11. The following publications are also incorporated by reference:

(1) 40 CFR 146 (1995).

(2) 40 CFR 60, Appendix A (1995).

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsection (a). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(c) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(d) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(e) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions which may be effective in Indiana which are not incorporated in this article or are retained as federal authority. (*Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111*)

329 IAC 3.1-1-8 Reference not specifically adopted

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2

Sec. 8. (a) Any reference to 40 CFR 122 or 40 CFR 124, in any provisions as adopted by reference from 40 CFR 260 through 40 CFR 270, means the permitting procedures contained in 329 IAC 3.1-13.

(b) Any reference to 40 CFR 279, in any provision as adopted by reference from 40 CFR 260 through 40 CFR 270, means 329 IAC 13. (*Solid Waste Management Board; 329 IAC 3.1-1-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-1-9 Conversion of federal terms

Authority: IC 13-14-8; IC 13-19-3-1

Affected: IC 13-14-8; 40 CFR 260 through 40 CFR 270

Sec. 9. (a) When used in 40 CFR, as adopted in this article, substitute the following unless otherwise indicated:

- (1) "Act" means the Environmental Management Act.
- (2) "Administrator" means the commissioner of the Indiana department of environmental management.
- (3) "Agency" means the Indiana department of environmental management.
- (4) "Director" means the commissioner of the Indiana department of environmental management.
- (5) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.
- (6) "He" means he, she, or it, without regard to gender.
- (7) "Notification requirements of section 3010" means the notification requirements of this article.
- (8) "RCRA permit" means state hazardous waste permit.
- (9) "Regional administrator" means the commissioner of the Indiana department of environmental management.
- (10) "She" means he, she, or it, without regard to gender.
- (11) "State", "authorized state", "approved state", and "approved program" means Indiana, except at:
 - (A) 40 CFR 260.10 in the definitions of "person", "state", and "United States";
 - (B) 40 CFR 262; or
 - (C) 40 CFR 270.2 in the definitions of "approved program" or "approved state", "director", "final authorization", "person", and "state".
- (12) "United States" means the state of Indiana.
- (13) "Variance" means exemption.

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(b) The following definitions found in 40 CFR 260.10 are excluded from the substitution of “commissioner of the Indiana department of environmental management” for “administrator” or “regional administrator” in subsection (a):

- (1) Administrator.
- (2) Hazardous waste constituent.
- (3) Regional administrator.

(c) The following definitions found in 40 CFR 260.10 are excluded from the substitution of “Indiana department of environmental management” for “environmental protection agency” in subsection (a):

- (1) Administrator.
- (2) EPA region.
- (3) Regional administrator.

(d) The substitution of terms in subsection (a) does not apply in the following portions of 40 CFR 260 through 40 CFR 270 as adopted in this rule:

- (1) 40 CFR 261.6(a)(3)(i)(A).
- (2) 40 CFR 261.6(a)(3)(i)(B).
- (3) 40 CFR 262.11.
- (4) 40 CFR 262.51.
- (5) 40 CFR 262.52.
- (6) 40 CFR 262.53. See 329 IAC 3.1-7-2 for additional information.
- (7) 40 CFR 262.54. See 329 IAC 3.1-7-2 for additional information.
- (8) 40 CFR 264.12(a).
- (9) 40 CFR 265.12(a).
- (10) 40 CFR 270.2.
- (11) 40 CFR 270.5.
- (12) 40 CFR 270.11(a)(3).
- (13) 40 CFR 270.32(b)(2).
- (14) 40 CFR 270.32(c).
- (15) 40 CFR 270.72(a)(5).
- (16) 40 CFR 270.72(b)(5).

(e) In 40 CFR 263, all references to “EPA”, “United States”, and “administrator” are retained. (*Solid Waste Management Board; 329 IAC 3.1-1-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-1-10 Notification

Authority: IC 13-7-3-1; IC 13-7-7; IC 13-7-8.5-4
Affected: IC 13-7-8.5

Sec. 10. Every hazardous waste generator, transporter, or owner or operator of a hazardous waste facility shall notify the commissioner of such activities on forms provided by the commissioner unless such activity is exempt from the notification requirements for hazardous waste generated by small quantity generators under 329 IAC 3.1-6. (*Solid Waste Management Board; 329 IAC 3.1-1-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-1-11 Notification for existing generators, transporters, and owners or operators of hazardous waste facilities

Authority: IC 13-7-3-1; IC 13-7-7; IC 13-7-8.5-4
Affected: IC 13-7-8.5

Sec. 11. (a) Any person who generates, transports, treats, stores, recovers, or disposes of hazardous waste, as defined in 329 IAC 3.1-6, shall notify the commissioner within ninety (90) days from the effective date of this article, unless such notification has been previously provided to the regional administrator in accordance with 3010 of RCRA (42 U.S.C. 6930) or in accordance with this article.

(b) Any person who generates, treats, stores, recovers, or disposes of a solid waste which has been determined to be hazardous,

or is added to the listing of hazardous waste by any revision of 329 IAC 3.1-6, shall notify the commissioner of such activity, in accordance with section 10 of this rule, this section, and sections 12 through 13 of this rule, no later than ninety (90) days from the effective date of the revision of 329 IAC 3.1-6 which causes the waste to be hazardous or adds the waste to the listing of hazardous waste.

(c) Any person who transports, or offers for transportation, a hazardous waste must first obtain an identification number under section 13 of this rule. *(Solid Waste Management Board; 329 IAC 3.1-1-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-12 Notification for new hazardous waste generators

Authority: IC 13-7-3-1; IC 13-7-7; IC 13-7-8.5-4
Affected: IC 13-7-8.5

Sec. 12. Any person who becomes a generator of hazardous waste after the ninety (90) day period for notification under section 11 of this rule shall notify the commissioner of such activity within thirty (30) days of the start of generation and obtain an identification number under section 13 of this rule. *(Solid Waste Management Board; 329 IAC 3.1-1-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-13 Identification numbers

Authority: IC 13-7-3-1; IC 13-7-7; IC 13-7-8.5-4
Affected: IC 13-7-8.5

Sec. 13. The commissioner shall require the use of identification numbers issued by the U.S. Environmental Protection Agency. *(Solid Waste Management Board; 329 IAC 3.1-1-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-1-14 Fees (Repealed)

Sec. 14. *(Repealed by Solid Waste Management Board; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1099)*

329 IAC 3.1-1-14.1 Fees

Authority: IC 13-14-8; IC 13-22
Affected: IC 13-15-11-3; IC 13-16; IC 13-22-12-2; IC 13-22-12-3; IC 13-30-4

Sec. 14.1. (a) The following definitions apply throughout this section:

- (1) "Boilers and industrial furnaces" or "BIFs" means facilities as defined under "boilers" and "industrial furnaces" in 40 CFR 260.10.
- (2) "Class 2 modification" refers to the modification classification system described under 40 CFR 270.42.
- (3) "Class 3 modification" refers to the modification classification system described under 40 CFR 270.42.
- (4) "Generator" or "LQG" means a person that:
 - (A) during the preceding calendar year:
 - (i) generated in any calendar month more than one thousand (1,000) kilograms of hazardous waste or more than one (1) kilogram of acute hazardous waste;
 - (ii) regardless of a person's rate of generation, accumulated at any time more than one (1) kilogram of acute hazardous waste; or
 - (iii) regardless of a person's rate of generation, accumulated at any time more than six thousand (6,000) kilograms of hazardous waste; or
 - (B) generated or accumulated in any calendar month more than one hundred (100) kilograms of spill clean-up material contaminated with acute hazardous waste.
- (5) "Ground water monitoring well" means a device required by a permit condition or applicable rule to monitor the quality of ground water during a twelve (12) month period.
- (6) "Land disposal" includes interim status and permitted hazardous waste landfills and interim status and permitted hazardous

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waste surface impoundments.

(7) "Operation" or "operating", for the purpose of this section, means the following:

(A) A hazardous waste treatment, storage, or disposal unit that will close by removing all waste is considered operating if waste is present in the unit as of January 1.

(B) A disposal unit that will close leaving waste in place is considered operating until the unit has permanently stopped receiving waste as of January 1.

(8) "Storage" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste storage.

(9) "Treatment" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste treatment. The term does not include treatment that is excluded from permitting or interim permitting under 40 CFR 262.34, 40 CFR 261.4, and 40 CFR 261.6.

(10) "Treatment storage disposal" or "TSD" means the term as defined in 40 CFR 260.10.

(b) In accordance with IC 13-22-12-2, hazardous waste fees are as follows:

(1) New permit application fees are as follows:

(A) Land disposal	\$40,600
(B) Incinerator (per unit)	\$21,700
(C) Storage	\$23,800
(D) Treatment (including boilers and industrial furnaces)	\$23,800

(2) Permit renewal and Class 3 modification fees are as follows:

(A) Land disposal	\$34,000
(B) Incinerator (per unit)	\$21,700
(C) Storage	\$17,200
(D) Treatment (including boilers and industrial furnaces)	\$17,200

(3) Class 2 modification fee

\$2,250

(4) Annual operation fees are as follows:

(A) Land disposal	\$37,500
(B) Incinerator (per unit)	\$10,000
(C) Storage	\$2,500
(D) Treatment (including boilers and industrial furnaces)	\$10,000
(E) Generator	\$1,565
(F) Post-closure activity	\$1,500
(G) Ground water compliance sampling at active facilities (per well)	\$1,000

(5) Manifest fee

\$8

(c) Requirements for application fees are as follows:

(1) The fees must be submitted with the hazardous waste permit application. Hazardous waste permit applications will be denied without the application fee.

(2) The fees are not refundable once staff review of the application has commenced.

(d) The annual operation fee schedule is established in IC 13-22-12 and applies to the following:

(1) Annual operation fees established in IC 13-22-12-3 apply to facilities listed in subsection (b) that:

- (A) operate with a permit;
- (B) operate under interim status;
- (C) are a large quantity generator (LQG); or
- (D) otherwise manage hazardous waste subject to regulation under IC 13-22-2.

(2) Hazardous waste annual operation fees begin accruing January 1 of each year. The commissioner shall assess hazardous waste annual operation fees not later than January 15 for the current year's activities. However, this is based on a generator's previous year's activities as defined by the generator.

(3) Hazardous waste management facilities permitted as of January 1 of the assessed year must pay annual operations fees, even if not yet constructed or receiving waste.

(4) No waivers exist for large quantity generators (LQGs).

(5) Permitted TSDs that choose not to manage hazardous waste will be assessed a fee. Fees are assessed for facilities that have the ability to manage hazardous waste.

(6) Permitted treatment and storage facilities that close by removing all waste will not be assessed a post-closure fee because

the facility is no longer regulated.

(7) Facilities that are issued a post-closure permit will be assessed the post-closure fee. Landfills will be assessed the fee for the duration of the post-closure period.

(8) A person shall remit a hazardous waste annual operation fee or an installment allowed by subsection (e) to the commissioner:

(A) no more than thirty (30) days after the date the fee is assessed; or

(B) by the date the installment is due.

(9) A person or facility that is described in more than one (1) category under this section shall pay all applicable fees.

(e) Installment payments are established as follows:

(1) The commissioner shall allow a person to remit installments on the annual fee if:

(A) the person determines that a single payment of the entire fee is an undue hardship; and

(B) the commissioner receives written notification requesting consideration of installment payments before January 30 of the invoiced year.

(2) Installments are due:

(A) on a quarterly basis:

(i) February 15;

(ii) May 15;

(iii) August 15; and

(iv) November 15; or

(B) on a semiannual basis:

(i) February 15; and

(ii) August 15.

(3) The commissioner will not send a notice of the installment method to the person who notifies in subdivision (1)(B).

(f) In addition to the penalties described under IC 13-30-4, the following will occur:

(1) If a person does not remit a hazardous waste annual operation fee or an installment established under subsection (e)(2):

(A) within sixty (60) days after the date the fee is assessed; or

(B) within thirty (30) days after the date the installment is due;

the person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable.

(2) The delinquency charge is due and payable sixty (60) days after the date the hazardous waste annual operation fee is assessed or thirty (30) days after the date the installment is due.

(3) If a person does not remit the hazardous waste annual operation fee or an installment established by the commissioner and any applicable delinquency charge:

(A) within ninety (90) days after the date the hazardous waste annual operation fee is assessed; or

(B) within sixty (60) days after the date the installment is due;

the commissioner may revoke the person's permit.

(4) Before revoking a person's permit pursuant to subdivision (3), the commissioner shall send a written notice by certified mail that describes:

(A) what fees and delinquency charge are due; and

(B) indicates that the commissioner may revoke the person's permit for nonpayment thirty (30) days after receipt of the notice.

(g) The fees and delinquency charges collected under this section must be:

(1) payable to the department; and

(2) deposited in the environmental management permit operation fund established under IC 13-15-11-3.

(Solid Waste Management Board; 329 IAC 3.1-1-14.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1094; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 2. Requests for Information

329 IAC 3.1-2-1 Purpose; scope; applicability

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-14-11

Sec. 1. This rule establishes the procedures that the commissioner will use in making IDEM hazardous waste records available to the public and sets forth the procedures the public must follow to request information. For purposes of this rule, the definitions in 329 IAC 6.1-2 apply. (*Solid Waste Management Board; 329 IAC 3.1-2-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 911; filed Nov 4, 1999, 10:19 a.m.: 23 IR 556; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-2 Disclosure of IDEM hazardous waste records

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 5-14-3; IC 13-7-6-6; IC 13-7-8.5-2; IC 13-7-16

Sec. 2. (a) The IDEM will make the fullest possible disclosure of records to the public, consistent with the following:

- (1) The rights of individuals to privacy.
- (2) The rights of persons in business to have certain information entitled to confidential treatment.
- (3) The need for the IDEM to promote frank internal policy deliberations and to pursue its official activities without undue disruption.

(b) All IDEM hazardous waste records shall be available to the public unless they are exempt from disclosure under IC 5-14-3, IC 13-14-11, IC 13-22-7-1, or 329 IAC 6.1.

(c) All nonexempt IDEM records shall be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor. (*Solid Waste Management Board; 329 IAC 3.1-2-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 911; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-3 Partial disclosure of hazardous waste records

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

Sec. 3. If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted. (*Solid Waste Management Board; 329 IAC 3.1-2-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 911; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-4 Requests to which this rule applies

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7; IC 13-22

Sec. 4. (a) This rule applies to any written request for records related to IC 13-22 or this article (other than a request made by a federal or another state agency) received by any IDEM office, whether or not the request cites any particular legal authority.

(b) Any written request to the IDEM for existing records prepared by the IDEM for routine public distribution, for example, pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under section 11 of this rule is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.

(c) This rule replaces the provisions of 329 IAC 6 for purposes of hazardous waste records filed or maintained in accordance with IC 13-22 or this article. (*Solid Waste Management Board; 329 IAC 3.1-2-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-5 Existing records

Authority: IC 13-1-12-8; IC 13-7-7
Affected: IC 13-1-12-8; IC 13-7-7

SOLID WASTE MANAGEMENT BOARD

Sec. 5. (a) This rule does not require the creation of new records in response to a request, nor does it require the IDEM to place a requestor's name on a distribution list for automatic receipt of certain kinds of records as they come into existence. This rule establishes requirements for disclosure of existing records.

(b) All existing IDEM records are subject to routine destruction according to standard record retention schedules. (*Solid Waste Management Board; 329 IAC 3.1-2-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-6 Agency records; filing request

Authority: IC 13-14-8; IC 13-19-3-1

Affected: IC 13-14-8

Sec. 6. A request for hazardous waste records shall be filed with the Hazardous Waste Records Officer, Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Solid Waste Management Board; 329 IAC 3.1-2-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-7 Misdirected written requests; oral requests

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 7. (a) The IDEM cannot assure that a timely or satisfactory response under this rule will be given to written requests that are addressed other than to the hazardous waste records officer. Any IDEM officer or employee who receives a written request for information or disclosure of IDEM records shall promptly forward a copy of the request to the hazardous waste records officer, by the fastest practicable means, and shall, if appropriate, commence action under section 11 of this rule. For purposes of section 12 of this rule, the time allowed with respect to initial determinations shall be computed from the day on which the hazardous waste records officer receives the request.

(b) While IDEM officers and employees will attempt in good faith to comply with requests for inspection or disclosure of IDEM records made orally, by telephone, or otherwise, such oral requests are not required to be processed in accordance with this rule. (*Solid Waste Management Board; 329 IAC 3.1-2-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-8 Form of request

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 8. A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location, and should be addressed to the address set forth in section 6 of this rule, but otherwise need not be in any particular form. (*Solid Waste Management Board; 329 IAC 3.1-2-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-9 Requests which do not reasonably describe records sought

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 9. (a) If the description of the records sought in the request is not sufficient to allow the IDEM to identify and locate the requested records, the commissioner, taking action under section 11 of this rule, will notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

(b) The IDEM will make every reasonable effort to assist in the identification and description of records sought and to assist the requestor in formulating his request. If a request is described in general terms, for example, all records having to do with a certain area, the commissioner taking action under section 11 of this rule may communicate with the requestor (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable

by the requestor. (*Solid Waste Management Board; 329 IAC 3.1-2-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-10 Responsibilities of the commissioner

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 10. (a) Upon receipt of a written request, the commissioner shall mark the request with the date of receipt and the date by which response is due. The commissioner shall retain a file copy of the request and shall monitor the handling of the request to ensure a timely response.

(b) The commissioner shall maintain a file concerning each request, which shall contain a copy of the request, initial and appeal determinations, and other pertinent correspondence and records.

(c) The commissioner shall collect and maintain the information necessary to compile the reports required by this rule. (*Solid Waste Management Board; 329 IAC 3.1-2-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-11 Action by the commissioner

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 11. (a) Whenever the commissioner becomes aware that she is responsible for responding to a request, the commissioner shall do the following:

(1) Take action under section 9 of this rule, if required, to obtain a better description of the records requested.

(2) Locate the records as promptly as possible or determine that the records are not known to exist.

(3) When appropriate, take action to obtain payment or assurance of payment.

(4) If any located records contain "business information", as defined in 329 IAC 3.1-4, comply with 329 IAC 6.1.

(5) Determine which of the requested records legally must be withheld, and why.

(b) The commissioner shall issue all initial determinations within the allowed period (see section 12 of this rule), specifying (individually or by category) which records will be disclosed and which will be withheld. Denials of requests shall comply with section 13 of this rule.

(c) In determining which records are responsive to a request, the commissioner shall ordinarily include those records within the possession of the IDEM as of the date of the receipt of the request by the IDEM. (*Solid Waste Management Board; 329 IAC 3.1-2-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 913; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-12 Time allowed for issuance of initial determination

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7; IC 13-14-11

Sec. 12. (a) Except as otherwise provided in this section, not later than the seventh working day after the date of receipt by the commissioner of a request for records, the commissioner shall issue a written determination to the requestor stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in the possession of the IDEM, the commissioner shall so inform the requestor.

(b) The period of seven (7) working days shall be measured from the date the request is first received and logged in by the commissioner.

(c) There shall be excluded from the period of seven (7) working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the IDEM under section 9 of this rule that his request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(d) There shall be excluded from the period of seven (7) working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the IDEM under IC 13-14-11 that prepayment of fees is required and the date that the requestor pays such charges.

(e) The commissioner may extend the basic seven (7) day period established under subsection (a) by a period not to exceed ten (10) additional working days, by furnishing written notice to the requestor within the basic seven (7) day period stating the reasons for such extension and the date by which the commissioner expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one (1) or more of the following unusual circumstances require the extension:

- (1) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.
- (3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two (2) or more offices of the IDEM.

(f) Failure of the commissioner to issue a determination within the seven (7) day period or any authorized extension shall constitute final agency action which authorizes the requestor to commence an action in the appropriate court to obtain the records. (*Solid Waste Management Board; 329 IAC 3.1-2-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 913; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-13 Initial denials of requests

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 4-21.5-3-7; IC 5-14-3-4; IC 5-14-3-9; IC 13-14-11; IC 13-22-7-1

Sec. 13. (a) An initial denial of a request may be issued only for the following reasons:

- (1) A statutory provision, provisions of this article, or court order requiring that the information not be disclosed.
 - (2) The record is exempt from mandatory disclosure under IC 5-14-3-4, IC 13-14-11, IC 13-22-7-1, or 329 IAC 6.1.
 - (3) 329 IAC 6.1 requires initial denial because a third person must be consulted in connection with a business confidentiality claim.
- (b) Each initial determination to deny a request shall:
- (1) be written, signed, and dated;
 - (2) identify the records that are being withheld; and
 - (3) state the basis for denial of each record being withheld.

However, no initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information, or a confidential investigation. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of IC 5-14-3-4, IC 13-14-11, IC 13-22-7-1, or 329 IAC 6.1.

(c) Each initial determination which denies, in whole or in part, a request for one (1) or more existing, located IDEM records shall state that the requestor may appeal the initial denial by filing a written appeal with the technical secretary of the SWMB in accordance with IC 4-21.5-3-7. Alternatively, the requestor may appeal the initial denial to court, under IC 5-14-3-9.

(d) A determination shall be deemed issued on the date the determination letter is placed in the IDEM mailing channels for first class mailing to the requestor, delivered to the U.S. Postal Service for mailing, or personally delivered to the requestor, whichever date occurs first. (*Solid Waste Management Board; 329 IAC 3.1-2-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-14 Appeal determinations; by whom made

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 14. The SWMB shall make one (1) of the following determinations in connection with every appeal from the initial denial of a request for an existing, located record:

- (1) The record must be disclosed.
- (2) The record must not be disclosed, because a statute or a provision of this rule or 329 IAC 6.1 so requires.

(*Solid Waste Management Board; 329 IAC 3.1-2-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; errata filed Jan 10, 2000, 3:01 p.m.:*

23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-2-15 Time allowed for issuance of appeal determination

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 4-21.5-3-27; IC 4-21.5-3-29; IC 5-14-3-9; IC 13-1-12-8; IC 13-7-7

Sec. 15. (a) The SWMB shall issue its written determination consistent with the time frames set forth in IC 4-21.5-3-27 and IC 4-21.5-3-29.

(b) Failure of the SWMB to make a written determination of an appeal within the time period described in IC 4-21.5-3-29 constitutes final agency action, giving the requestor the right to judicial review under IC 5-14-3-9(d). (*Solid Waste Management Board; 329 IAC 3.1-2-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-2-16 Reduction or waiver of fee

Authority: IC 13-1-12-8; IC 13-7-7

Affected: IC 13-1-12-8; IC 13-7-7

Sec. 16. The fee chargeable for an IDEM hazardous waste record shall be reduced or waived by the IDEM if the commissioner determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees shall be considered (but need not necessarily be granted) in connection with each request from a representative of the press or other communications medium, or from a public interest group. A request for reduction or waiver of fees shall be addressed to the hazardous waste records officer. The commissioner shall initially determine whether the fee shall be reduced or waived and shall so inform the requestor. This initial determination may be appealed by letter addressed to the technical secretary of the SWMB. The SWMB shall decide such appeals. (*Solid Waste Management Board; 329 IAC 3.1-2-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 3. Confidentiality of Business Information

329 IAC 3.1-3-1 Applicability

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 13-14-11

Sec. 1. This rule is replaced with the provisions of 329 IAC 6.1 for the purpose of confidential hazardous waste information. (*Solid Waste Management Board; 329 IAC 3.1-3-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 915; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-3-2 Applicability (Repealed)

Sec. 2. (*Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563*)

329 IAC 3.1-3-3 Notice to be included in IDEM requests, demands, and forms; method of asserting business confidentiality claim; effect of failure to assert claim at time of submission (Repealed)

Sec. 3. (*Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563*)

329 IAC 3.1-3-4 Initial action by commissioner; confidentiality determination; notice to affected businesses; opportunity to comment (Repealed)

Sec. 4. (*Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563*)

329 IAC 3.1-3-5 Final confidentiality determination by the SWMB; role of SWMB; comment period; treatment of

comments; matters to be considered; actions by commissioner; emergency situations (Repealed)

Sec. 5. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-6 Confidentiality determinations; substantive criteria (Repealed)

Sec. 6. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-7 Safeguarding of business information; penalty for wrongful disclosure; confidentiality agreements (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-8 Notification; affected businesses (Repealed)

Sec. 8. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-3-9 Confidentiality agreements (Repealed)

Sec. 9. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

Rule 4. Definitions

329 IAC 3.1-4-1 Applicability

Authority: IC 13-14-8; IC 13-19-3-1

Affected: IC 13-14-8; IC 13-11-2; 40 CFR 260 through 40 CFR 270

Sec. 1. (a) In addition to the definitions contained in IC 13-11-2 and in this rule, the definitions contained in 40 CFR 260 through 40 CFR 270 are hereby adopted and incorporated by reference and made applicable to this article, except as provided otherwise in subsection (b).

(b) The following are exceptions to federal definitions:

(1) Delete the definitions of “existing tank system” or “existing component” in 40 CFR 260.10 and substitute the definition under section 11 of this rule.

(2) Delete the definitions of “new tank system” or “new tank component” in 40 CFR 260.10 and substitute the definition under section 18 of this rule.

(3) In addition to the definition of “universal waste” in 40 CFR 260.10, add the following: Mercury-containing lamps as described in 329 IAC 3.1-16-2(3).

(Solid Waste Management Board; 329 IAC 3.1-4-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 920; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1024; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3354; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-4-2 “Affected business” defined (Repealed)

Sec. 2. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-3 “Authorized person” defined (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-4 “Available to the public” defined (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-5 “Board” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-7-2; IC 13-19-2

Sec. 5. “Board”, as used in this article, means the SWMB as created by IC 13-19-2. *(Solid Waste Management Board; 329 IAC 3.1-4-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-6 “Business” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 6. “Business” means any person engaged in a business, trade, employment, calling, or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure (or may lawfully inure) to the benefit of any private shareholder or individual. *(Solid Waste Management Board; 329 IAC 3.1-4-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-7 “Business confidentiality claim” defined (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-8 “Business information” defined (Repealed)

Sec. 8. *(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)*

329 IAC 3.1-4-9 “Commissioner” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 9. “Commissioner” means the commissioner of the Indiana department of environmental management. *(Solid Waste Management Board; 329 IAC 3.1-4-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-9.1 “Electric lamp” defined (Repealed)

Sec. 9.1. *(Repealed by Solid Waste Management Board; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3114)*

329 IAC 3.1-4-9.5 “Electronic format” defined

Authority: IC 13-14-7; IC 13-22-2-4

Affected: IC 13-22-4; 40 CFR 262.21

Sec. 9.5. “Electronic format” means information submitted by computer diskette, electronic mailbox, or other electronic means as approved by the commissioner. *(Solid Waste Management Board; 329 IAC 3.1-4-9.5; filed Jun 27, 1997, 4:16 p.m.: 20 IR 3012; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-10 “EPA” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 10. "EPA" means the U.S. Environmental Protection Agency. *(Solid Waste Management Board; 329 IAC 3.1-4-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-11 "Existing tank system" or "existing component" defined

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2

Sec. 11. "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to June 20, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

- (1) a continuous on-site physical construction or installation program has begun; or
- (2) the owner or operator has entered into contractual obligations that cannot be canceled or modified without substantial loss for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(Solid Waste Management Board; 329 IAC 3.1-4-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3354; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-4-12 "Final (state) permit application" or "final permit application" defined

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 5-14-3-2; IC 13-22-2

Sec. 12. "Final (state) permit application" or "final permit application" means the permit application required by 329 IAC 3.1-13. The application is equivalent to the Part B permit application as specified in 40 CFR 270. *(Solid Waste Management Board; 329 IAC 3.1-4-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-13 "Hazardous waste records officer" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 13. "Hazardous waste records officer" means the individual designated by the commissioner to whom all requests for information under this rule shall be directed. *(Solid Waste Management Board; 329 IAC 3.1-4-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-14 "IDEM" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 14. "IDEM" means the Indiana department of environmental management. *(Solid Waste Management Board; 329 IAC 3.1-4-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-4-15 "IDEM hazardous waste record" defined

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2; IC 13-22

Sec. 15. "IDEM hazardous waste record" or "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by the IDEM related to IC 13-22 or this article. The term includes informal writings (such as drafts) and information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents which were created or acquired by the IDEM, its predecessors, its officers, and its employees by the use of government funds or in the course of transacting official business. However, the term does not include

materials which are legally owned by an IDEM officer or employee in his or her purely personal capacity. This definition is intended to supplement the definition of “public record” in IC 5-14-3-2 and in no way restrict its coverage. (*Solid Waste Management Board; 329 IAC 3.1-4-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-16 “Interim status” defined

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 5-14-3-2; IC 13-22-2

Sec. 16. “Interim status” means that interim period during which an existing hazardous waste management facility shall be treated as having been issued a permit. Interim status begins when an existing facility first becomes subject to this article or 40 CFR 270.70. Interim status terminates upon final administrative disposition of its final (state) permit pursuant to 329 IAC 3.1-13 or closure pursuant to 329 IAC 3.1-10. (*Solid Waste Management Board; 329 IAC 3.1-4-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-17 “Interim status standards” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 17. “Interim status standards” means, for existing facilities, those requirements under 329 IAC 3.1-10. (*Solid Waste Management Board; 329 IAC 3.1-4-17; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-17.1 “Mercury-containing lamp” defined (Repealed)

Sec. 17.1. (*Repealed by Solid Waste Management Board; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3114*)

329 IAC 3.1-4-18 “New tank system” or “new tank component” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 18. “New tank system” or “new tank component” means a tank system or component that will be used for storage or treatment of hazardous waste and for which installation commenced after June 20, 1988; however, for purposes of 40 CFR 264.193(g)(2) and 40 CFR 265.193(g)(2), a new tank system is one for which construction commenced after June 20, 1988. (*Solid Waste Management Board; 329 IAC 3.1-4-18; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-19 “Part A”, “Part A permit”, or “Part A permit application” defined

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 5-14-3-2; IC 13-22-2

Sec. 19. “Part A”, “Part A permit”, or “Part A permit application” means the EPA Forms 3510-1 and 3510-3 which are submitted under 329 IAC 3.1-13. These forms are available from the IDEM. (*Solid Waste Management Board; 329 IAC 3.1-4-19; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-20 “Person” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 20. “Person” means an individual, partnership, corporation, association, or other public or private organization or legal

entity, including federal, state, or local governmental bodies and agencies and their employees. (*Solid Waste Management Board; 329 IAC 3.1-4-20; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-20.2 “Processed scrap metal” defined

Authority: IC 13-14-8; IC 13-22-2

Affected: IC 13-22

Sec. 20.2. (a) “Processed scrap metal” means scrap metal that has been manually or physically altered to either separate by types of distinct material to enhance economic value or to improve the handling of materials.

(b) Processed scrap metal includes, but is not limited to, scrap metal that has been:

- (1) baled;
- (2) shredded;
- (3) sheared;
- (4) chopped;
- (5) crushed;
- (6) flattened;
- (7) cut;
- (8) melted or separated and sorted by metal type; or
- (9) fines, drosses, and related materials that have been agglomerated.

(*Solid Waste Management Board; 329 IAC 3.1-4-20.2; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-21 “Reasons of business confidentiality” defined (Repealed)

Sec. 21. (*Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563*)

329 IAC 3.1-4-21.1 “Reclamation” defined

Authority: IC 13-14-8; IC 13-22-2

Affected: IC 13-22

Sec. 21.1. (a) “Reclamation” means processing to recover or regenerate a distinct component of a secondary material.

(b) As used in this section, examples of “processing to recover” may include any of the following:

- (1) Recovery of lead components from spent lead acid batteries.
- (2) Recovery of metals from sludges, spent materials, or other metal bearing waste.
- (3) Recovery of mercury from mercury-containing lamps or other devices.

(c) As used in this section, examples of “regenerate” may include any of the following:

- (1) Distillation of spent solvent for reuse of the solvent.
- (2) Regeneration of spent acids for reuse of the acids.
- (3) Regeneration of spent carbons for reuse of the carbons.

(*Solid Waste Management Board; 329 IAC 3.1-4-21.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-22 “Recorded” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 22. “Recorded” means written or otherwise registered in some form for preserving information, including such forms as drawings, photographs, video tape, sound recordings, punched cards, and computer tape or disk. (*Solid Waste Management Board; 329 IAC 3.1-4-22; filed Jan 24, 1992, 2:00 p.m.: 15 IR 922; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-23 “Requestor” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 23. “Requestor” means any person who has submitted a request to IDEM. (*Solid Waste Management Board; 329 IAC 3.1-4-23; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-23.3 “Secondary material” defined

Authority: IC 13-14-8; IC 13-22-2

Affected: IC 13-22

Sec. 23.3. “Secondary material” means a solid, liquid, or contained gaseous form of a byproduct, spent material, sludge, discarded commercial chemical product, or scrap metal that may be incorporated into a manufacturing or an industrial process, except reclamation, to make a product. (*Solid Waste Management Board; 329 IAC 3.1-4-23.3; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-24 “SWMB” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 24. “SWMB” means the solid waste management board. (*Solid Waste Management Board; 329 IAC 3.1-4-24; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-25 “Used oil” defined

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 5-14-3-2; IC 13-1-2; IC 13-1-12-6; IC 13-7-2

Sec. 25. “Used oil” means a petroleum based or synthetic oil that has been used. The term includes oil that has been used for one (1) or more of the following purposes:

- (1) Lubricant for engines, turbines, or gears.
- (2) Hydraulic fluid, including transmission fluid.
- (3) Metal working fluid, including cutting, grinding, machining, rolling, stamping, quenching, and coating oil.
- (4) Insulating fluid or coolants.

(*Solid Waste Management Board; 329 IAC 3.1-4-25; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-25.1 “Utilize” defined

Authority: IC 13-14-8; IC 13-22-2

Affected: IC 13-22

Sec. 25.1. “Utilize” means to legitimately incorporate a secondary material into an industrial or manufacturing process to make a usable product without intervening reclamation or recovery, and includes any necessary transportation directly between the generator and user or storage by the generator or user of the secondary material, but which must occur without speculative accumulation as defined in “accumulating speculatively”, defined in 40 CFR 261.1(a)(8), or in a manner that constitutes disposal. (*Solid Waste Management Board; 329 IAC 3.1-4-25.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-4-26 “Voluntarily submitted information” defined (Repealed)

Sec. 26. (*Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563*)

Rule 5. Rulemaking Petitions; Exemptions; Additional Regulation of Certain Hazardous Waste Activities

329 IAC 3.1-5-1 Purpose; scope; applicability

Authority: IC 13-7-7; IC 13-7-8.5-4

Affected: IC 4-21.5; IC 13-1-12-6; IC 13-7-8.5; 40 CFR 260.20; 40 CFR 260.22; 40 CFR 260.30; 40 CFR 260.31; 40 CFR 260.32; 40 CFR 260.33

Sec. 1. (a) This rule establishes standards, criteria, and procedures for the following:

- (1) General rulemaking petitions.
- (2) Petitions for equivalent testing or analytical methods.
- (3) Petitions to exclude a waste produced at a particular facility.
- (4) Exemptions to be classified as solid waste.
- (5) Exemptions to be classified as a boiler.
- (6) Additional regulation of certain hazardous waste recycling activities.
- (7) Exemptions from land disposal restrictions.

(b) Final decisions of the commissioner made pursuant to this rule are subject to the notice requirements and procedures prescribed under IC 4-21.5. (*Solid Waste Management Board; 329 IAC 3.1-5-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-5-2 Petitions for delisting; petitions for equivalent testing or analytical methods

Authority: IC 13-14-1; IC 13-14-8; IC 13-22-2-3; IC 13-22-2-4

Affected: IC 13-14-8-5; IC 13-14-9; 40 CFR 260.20; 40 CFR 260.21

Sec. 2. (a) Any person may petition the commissioner to exclude a waste or waste derived material at a particular facility from 40 CFR 261.3 or 40 CFR 261, Subpart D, as incorporated by this article. In addition to the general petition requirements in this section, a petition must include the additional requirements of section 3 of this rule.

(b) Each petition must be submitted to the commissioner by certified mail and must include:

- (1) the petitioner's name and address;
- (2) a statement of the petitioner's interest in the proposed action;
- (3) a description of the proposed action, including suggested rule language where appropriate; and
- (4) a statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The commissioner will make a tentative recommendation for rulemaking to grant or deny a petition and will publish notice of such tentative recommendation in the Indiana Register for written public comment as provided in IC 13-14-9.

(d) Upon the written request of any interested person, the commissioner may hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The commissioner may in any case decide to hold an informal public hearing.

(e) After evaluating all public comments, the commissioner will publish notice of the recommendation for rulemaking to grant or deny the petition in the Indiana Register as provided in IC 13-14-9.

(f) As provided in IC 13-14-8-5, any person may present a proposal to exclude a waste at a particular facility from 40 CFR 261.3 or 40 CFR 261, Subpart D, as incorporated by this article. In addition to the requirements of IC 13-14-8-5, a proposal must include the additional requirements of section 3 of this rule.

(g) Where the administrator of the EPA has granted a general rulemaking petition or a petition for equivalent testing or analytical method pursuant to 40 CFR 260.20 and 40 CFR 260.21, the board may, at its discretion, accept such determination and amend this article accordingly provided that the petitioner can furnish appropriate evidence of the administrator's actions and the board determines that granting such a petition is consistent with policies outlined in IC 13-14. (*Solid Waste Management Board; 329 IAC 3.1-5-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2740, eff Jul 1, 1999; errata filed May 11, 1998, 2:10 p.m.: 21 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-5-3 Waste produced at a particular facility; petition to exclude

Authority: IC 13-14-8; IC 13-22-2
Affected: IC 13-19-2; IC 13-22-2-3; 40 CFR 260.22

Sec. 3. 40 CFR 260.22 is incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-5-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741, eff Jul 1, 1999; errata filed May 11, 1998, 2:10 p.m.: 21 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-5-4 Exemption from classification as a solid waste or to be classified as a boiler; adoption of federal procedures

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 260.30 through 40 CFR 260.41

Sec. 4. (a) The standards, criteria, and procedures for granting exemptions from classification as a solid waste or to be classified as a boiler contained in 40 CFR 260.30 through 40 CFR 260.33 are hereby adopted and incorporated by reference and made applicable to this article.

(b) In 40 CFR 260.33(a), delete the words "in the region where the recycler is located". (*Solid Waste Management Board; 329 IAC 3.1-5-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-5-5 Additional regulation of certain hazardous waste recycling activities; adoption of federal procedures

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 4-21.5-3-5; IC 13-7-1-2; IC 13-7-8.5; 40 CFR 260.40; 40 CFR 260.41

Sec. 5. The standards, criteria, and procedures for the case-by-case regulation of certain hazardous waste recycling activities contained in 40 CFR 260.40 through 40 CFR 260.41 are hereby adopted and incorporated by reference and made applicable to this article. (*Solid Waste Management Board; 329 IAC 3.1-5-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-5-6 Exemptions from land disposal restrictions

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 13-11-2-71; 40 CFR 268

Sec. 6. (a) Any person applying to the administrator of the EPA for an exemption from land disposal restrictions described in 329 IAC 3.1-12-2 must submit copies of such request and all supporting documents to the commissioner.

(b) A person who obtains an exemption from the administrator must apply to the commissioner for concurrence that such an exemption is consistent with the policies outlined in environmental management laws as defined at IC 13-11-2-71. (*Solid Waste Management Board; 329 IAC 3.1-5-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 6. Identification and Listing of Hazardous Waste

329 IAC 3.1-6-1 Adoption of federal identification and listing of hazardous waste (40 CFR 261)

Authority: IC 13-7-7; IC 13-7-8.5
Affected: IC 13-7-1-2; IC 13-7-8.5; IC 13-7-12-1; 40 CFR 261

Sec. 1. (a) This rule identifies those solid wastes which are subject to regulation as hazardous waste under this article and which are subject to the notification requirements of 329 IAC 3.1-1.

(b) Except as provided otherwise in section 2 of this rule, 40 CFR 261 is hereby incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-6-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2062; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; 40 CFR 261

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:

(1) This rule identifies only some of the materials which are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if:

(A) in the case of IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) in the case of IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

(7) Delete 40 CFR 261, Appendix IX.

(8) In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

(9) In 40 CFR 261.21(a)(4), delete "an oxidizer as defined in 49 CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

(10) Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

(11) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(12) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(13) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(14) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(15) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432)

329 IAC 3.1-6-3 Indiana additions; listing of hazardous waste

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 13-7; 40 CFR 261

Sec. 3. In addition to the list of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are added to the list of hazardous waste:

(1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).

- (2) GB (Isopropyl methyl phosphonofluoridate).
- (3) H, HD (Bis(2-chloroethyl) sulfide).
- (4) HT (sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethyl-thio)ethyl]ester)).
- (5) L (Dichloro(2-chlorovinyl)arsine).
- (6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).

The above listed chemical munitions have the Indiana hazardous waste number I001. (*Solid Waste Management Board; 329 IAC 3.1-6-3; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-6-4 Exclusions

Authority: IC 13-14-8; IC 13-22-2
Affected: IC 13-22

Sec. 4. (a) In addition to the exclusions incorporated by reference in this rule, the following materials being recycled are excluded from regulation under this article:

- (1) Processed scrap metal from processing containers, tanks, and equipment that:
 - (A) contained hazardous waste; and
 - (B) meets the requirements of subsection (b) prior to shipment from the processing facility.
- (2) Processed scrap metal that consists of fines, drosses and related materials that is stored in containers sufficient to prevent a release to the environment prior to recovery.
- (3) Other scrap metal that is not addressed in the processed scrap metal provisions in subdivisions (1) and (2).
- (4) Shredded circuit boards provided that:
 - (A) storage is in containers sufficient to prevent a release to the environment prior to recovery; and
 - (B) shredded circuit boards that are free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries.

(b) Scrap metal contaminated with hazardous waste residues must be cleaned to be free of all adhering hazardous waste residues, which are in a form, that could be released to the environment due to dripping or exposure to precipitation. The surface must also be free of hazardous waste residues that can be easily removed by rinsing with a suitable solvent or other commonly employed means of cleaning. Paint or other metal finishes are not considered hazardous waste residues for purposes of this exclusion. (*Solid Waste Management Board; 329 IAC 3.1-6-4; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1097; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-6-5 Secondary materials

Authority: IC 13-14-8; IC 13-22-2
Affected: IC 13-22

Sec. 5. (a) A secondary material that causes no significant increase in the threat posed to human health or the environment as defined in subsection (e)(4) is not a solid waste if it:

- (1) does not meet the definition of solid waste under 40 CFR 261.2(e); or
- (2) is legitimately utilized as defined under 329 IAC 3.1-4-25.1 in an industrial process, except reclamation as defined under 329 IAC 3.1-4-21.1.

(b) A secondary material generated as a result of the utilization of a secondary material that does not qualify as an exempt secondary material is a solid waste and subject to a waste determination as to the waste's status as a hazardous waste as follows:

- (1) This waste determination shall be conducted according to the requirements of 40 CFR 262.11.
- (2) In the case of a secondary material that is listed under this rule, a solid waste generated from the utilization in accordance with this section does not retain the listing from which the secondary material is derived.

(c) There is no requirement for a permit under this article for the use of a secondary material as a manufacturing ingredient when used as a legitimate manufacturing ingredient in accordance with the requirements of this section.

(d) The commissioner shall:

- (1) provide a written determination for recognition of the secondary material exemption upon request; and
- (2) respond no later than ninety (90) days after the request is received.

(e) In making a determination on legitimate use of secondary materials, the following criteria shall be considered, when

relevant, for determining legitimate use and exempt status:

- (1) The secondary material must be utilized in the manufacturing process without intervening reclamation or recovery.
- (2) Transportation must be directly between the generator of the secondary material and the user of the secondary material.
- (3) The secondary material or the resultant product, or both, must not be accumulated speculatively as defined at 40 CFR 261.1(a)(8).
- (4) The secondary material must be handled in a manner that poses no significant increase in the threat to human health or the environment beyond that posed by the use of the raw material being replaced. This may be demonstrated by showing the secondary material is handled in a manner that is:
 - (A) consistent with the raw materials being replaced; and
 - (B) guards against loss or release during storage.
- (5) The manufacturing process cannot be a reclamation activity. In evaluating this factor, the commissioner will use the definition of reclamation in 329 IAC 3.1-4-21.1 to distinguish between reclamation and other manufacturing processes.
- (6) The secondary material must be a legitimate ingredient necessary to the production process or product. This may be demonstrated by showing any of the following:
 - (A) The secondary material is effective in the manufacturing process.
 - (B) The secondary material is used under controlled conditions.
 - (C) The user documents and can show through records how, when, and in what volumes the secondary material is used.
 - (D) In two-party transactions, there is consideration, usually monetary, reflecting the value of the secondary material to the user.
 - (E) There are written specifications for the incoming material and the product.
 - (F) There is a program in place by which the user verifies that incoming materials meet established specifications.
- (7) The person must demonstrate that there is a market for the product. This may be demonstrated by showing any of the following:
 - (A) Industry-recognized quality specifications for the product.
 - (B) Any recognitions of the product as a commodity.
 - (C) Contracts for purchase of the product or other agreements.
- (f) The product cannot be burned for energy recovery or used in a manner constituting disposal unless the secondary material is a fuel or originally intended to be used in a manner involving placement on the land. (*Solid Waste Management Board; 329 IAC 3.1-6-5; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-6-6 Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana

Authority: IC 13-14-8; IC 13-22-2
 Affected: IC 13-22

Sec. 6. Electric arc furnace dust (EAFD), hazardous waste code K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor’s Crawfordsville, Indiana plant, and treated to be nonhazardous is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

- (1) Delisting levels for the waste excluded by this section are as follows:
 - (A) The constituent concentrations measured in any of the extracts required by subdivision (2) must not exceed any of the levels listed in Table 1:

Table 1. Maximum Constituent Concentrations in TCLP Extracts	
Antimony	0.206 mg/L
Arsenic	0.0936 mg/L
Barium	55.7 mg/L
Beryllium	0.416 mg/L
Cadmium	0.15 mg/L
Chromium (total)	1.55 mg/L
Lead	5.0 mg/L

SOLID WASTE MANAGEMENT BOARD

Mercury	0.149 mg/L
Nickel	28.3 mg/L
Selenium	0.58 mg/L
Silver	3.84 mg/L
Thallium	0.088 mg/L
Vanadium	21.1 mg/L
Zinc	280 mg/L

(B) Total mercury in the treated EAFD must not exceed one (1.0) milligram per kilogram.

(2) Heritage shall demonstrate on a monthly basis that the constituents in the treated EAFD do not exceed the delisting levels in subdivision (1) as follows:

(A) Heritage shall collect two (2) representative samples of the treated EAFD each month. Each sample must be analyzed using all of the following tests:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", 3rd Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996) (SW-846).

(ii) Method 1311, described in item (i), substituting an extraction fluid with a pH of 12.0 ± 0.05 standard units for the normal extraction fluid. Heritage may remove dissolved oxygen to less than five-tenths (0.5) parts per million by the addition of a stoichiometric amount of sodium hydrosulfite.

(iii) Method 7471A, Mercury in Solid or Semi-Solid Waste (Manual Cold-Vapor Technique), described in SW-846.

(B) Detection levels must be less than the delisting levels in subdivision (1).

(C) Heritage must comply with Chapter 1, "Quality Control", of SW-846.

U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Changes in the manufacturing process or the treatment process must be managed as follows:

(A) Heritage must notify the department in writing if any of the following occur:

(i) If Nucor changes the manufacturing process or chemicals used in the manufacturing process from those described in the petition for delisting.

(ii) If Heritage changes the treatment process or the chemicals used in the treatment process from those described in the petition for delisting.

(B) Heritage must handle all wastes generated after any process change as hazardous waste until all of the following occur:

(i) Heritage has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) Heritage has received written approval from the department to continue to manage the treated EAFD under this exclusion.

(4) Heritage must submit an annual report that summarizes the data obtained through monthly verification testing to IDEM by February 1 of each year. The report must include the results of each month's analysis required by subdivision (2) for the previous calendar year.

(5) Heritage must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(6) All data required by subdivisions (4) and (5) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The treated EAFD must be disposed of in accordance with:

(A) 329 IAC 10; or

(B) this article.

(8) Solid waste landfill units permitted under 329 IAC 10 that accept the treated EAFD must comply with the ground water

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monitoring requirements of 329 IAC 10-21.

(9) The treated EAFD must be covered in accordance with 329 IAC 10-20-13 through 329 IAC 10-20-14.

(10) Only the following materials may be used as alternative daily cover over the treated EAFD:

- (A) Category B slag debris.
- (B) Foundry sand.
- (C) Petroleum contaminated soils.
- (D) Fly ash.
- (E) Conditioned fly ash.
- (F) Coal ash.
- (G) Uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.
- (H) Other materials approved in accordance with 329 IAC 10-20-14.1 for use over the treated EAFD after the effective date of this rule.

(11) No waste that is capable of providing oxygen or acting as a source of oxygen may be disposed of in the same cell or unit as the treated EAFD.

(12) If, at any time after disposal of the delisted waste, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent identified in subdivision (1) is at a level in a test extract or in the leachate that is higher than the delisting level listed in subdivision (1), then Heritage must report such data in writing to the commissioner within ten (10) days of first possessing or being made aware of that data.

(13) If, at any time after disposal of the treated EAFD, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any of the following constituents is at a level in the ground water higher than the levels listed in Table 2:

Table 2. Maximum Allowable Concentrations in Ground Water

Antimony	0.006 mg/L
Arsenic	0.005 mg/L
Barium	2.0 mg/L
Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L
Nickel	0.753 mg/L
Selenium	0.05 mg/L
Silver	0.187 mg/L
Thallium	0.002 mg/L
Vanadium	0.263 mg/L
Zinc	11.25 mg/L
Sulfides	1.0 mg/L

then Heritage must report such data in writing to the commissioner with ten (10) days after first possessing or being made aware of that data.

(14) No more than thirty thousand (30,000) cubic yards of treated EAFD may be treated or disposed of annually under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-6; filed Oct 3, 2001, 9:43 a.m.: 25 IR 372)

Rule 7. Standards Applicable to Generators of Hazardous Waste

329 IAC 3.1-7-1 Adoption of federal standards applicable to generators of hazardous waste (40 CFR 262)

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5

Affected: IC 13-7; 40 CFR 262

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Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 262 is hereby incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-7-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; filed May 6, 1994, 5:00 p.m.: 17 IR 2063*)

329 IAC 3.1-7-2 Exceptions and additions; generator standards

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 262

Sec. 2. Exceptions and additions to federal standards for generators are as follows:

(1) Delete 40 CFR 262.12(a) and substitute "A generator who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned."

(2) In addition to the requirements of 40 CFR 262, Subpart B and the appendix to 40 CFR 262, the generator shall enter the EPA hazardous waste number for each waste on the Uniform Hazardous Waste Manifest (EPA Form 8700-22) as follows:

(A) Enter the four (4) digit EPA hazardous waste number from 40 CFR 261 that identifies the waste in item "I" of the manifest form or item "R" of the continuation sheet (EPA Form 8700-22A).

(B) If multiple EPA hazardous waste numbers apply, enter the hazardous waste numbers as follows:

(i) Enter the one (1) EPA hazardous waste number that identifies the most distinctive or most hazardous property of the waste in item "I" of the manifest form or item "R" of the continuation sheet.

(ii) The remaining EPA hazardous waste numbers may be entered in item "J" of the manifest form or item "S" of the continuation sheet.

(C) For nonhazardous or unregulated waste that may be included in the shipment, enter "NONE" in item "I".

(3) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.

(4) In 40 CFR 262.42(a)(2), delete "in the Region in which the generator is located".

(5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.

(6) In 40 CFR 262.53 and 40 CFR 262.54, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the Office of Land Quality, Indiana Department of Environmental Management, P.O. Box 7035, Indianapolis, Indiana 46207-7035.

(7) Exception reports required from primary exporters pursuant to 40 CFR 262.55 must be filed with the Regional Administrator of the EPA and the commissioner.

(8) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.

(9) In 40 CFR 262.57(b), the reference to the "administrator" is retained. The commissioner may also request extensions of record retention times for hazardous waste export records.

(*Solid Waste Management Board; 329 IAC 3.1-7-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112*)

329 IAC 3.1-7-3 Manifest; general (Repealed)

Sec. 3. (*Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452*)

329 IAC 3.1-7-4 Acquisition of manifests (Repealed)

Sec. 4. (*Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452*)

329 IAC 3.1-7-5 Number of copies (Repealed)

Sec. 5. (*Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452*)

329 IAC 3.1-7-6 Use of the manifest (Repealed)

Sec. 6. (*Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452*)

329 IAC 3.1-7-7 Indiana hazardous waste manifest and instructions (EPA Form 8700-22 and EPA Form 8700-22A and instructions); general (Repealed)

Sec. 7. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-8 Indiana hazardous waste manifest and instructions (EPA Form 8700-22 and EPA Form 8700-22A); generators (Repealed)

Sec. 8. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-9 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); transporters (Repealed)

Sec. 9. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-10 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); owners and operators of treatment, storage, or disposal facilities (Repealed)

Sec. 10. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-11 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); additional requirements (Repealed)

Sec. 11. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-12 Indiana hazardous waste manifest and instructions (EPA Form 8700-22, EPA Form 8700-22A, and instructions); handling codes for treatment, storage, and disposal methods (Repealed)

Sec. 12. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-13 Indiana hazardous waste manifest (EPA Form 8700-22 and EPA Form 8700-22A) (Repealed)

Sec. 13. (Repealed by Solid Waste Management Board; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

329 IAC 3.1-7-14 Biennial reporting

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 262.41

Sec. 14. (a) A generator who ships his hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit biennial reports as follows:

(1) On forms provided by the commissioner according to the instructions on the form.

(2) To the:

Department of Environmental Management
Office of Land Quality
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

(3) No later than March 1 of each even-numbered year.

(b) Any generator who treats, stores, recovers, or disposes of hazardous wastes on-site must submit a biennial report covering those hazardous wastes in accordance with the provisions of 329 IAC 3.1-9 through 329 IAC 3.1-11 and 329 IAC 3.1-13, and the

instructions on the form.

(c) Reporting for exports of hazardous waste is not required on the biennial report form. A separate annual report requirement is set forth in section 16 of this rule. (*Solid Waste Management Board; 329 IAC 3.1-7-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 933; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091*)

329 IAC 3.1-7-15 Additional reporting

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5-2; 40 CFR 262.43

Sec. 15. The commissioner, as she deems necessary under IC 13-7-8.5-2, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 329 IAC 3.1-6. (*Solid Waste Management Board; 329 IAC 3.1-7-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934*)

329 IAC 3.1-7-16 Annual report for exporters

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 262.56

Sec. 16. (a) Primary exporters of hazardous waste shall file with the administrator and the commissioner, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

- (1) The EPA identification number, name, and mailing and site address of the exporter.
 - (2) The calendar year covered by the report.
 - (3) The name and site address of each consignee.
 - (4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number from 329 IAC 3.1-6, the U.S. Department of Transportation hazard class, the name and EPA identification number (where applicable) for each transporter used, the total amount of waste shipped, and the number of shipments pursuant to each notification.
 - (5) Except for hazardous waste produced by exporters of greater than one hundred (100) kilograms but less than one thousand (1,000) kilograms in a calendar month, unless provided under section 14 of this rule, in even-numbered years:
 - (A) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
 - (B) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
 - (6) A certification signed by the primary exporter which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."
- (b) Reports shall be sent to the following addresses:
- (1) Office of International Activities (A-106), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.
 - (2) Office of Land Quality, Indiana Department of Environmental Management, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(*Solid Waste Management Board; 329 IAC 3.1-7-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091*)

Rule 8. Standards Applicable to Transporters of Hazardous Waste (40 CFR 263)

329 IAC 3.1-8-1 Adoption of federal standards applicable to transporters of hazardous waste

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; 40 CFR 263

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 263 is hereby incorporated by reference. (*Solid Waste*

Management Board; 329 IAC 3.1-8-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-8-2 Exceptions and additions; transporter standards

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 263

Sec. 2. Exceptions and additions to federal standards for transporters are as follows:

- (1) All references to "EPA", "United States", and "administrator" are retained.
- (2) All references to the manifest provisions in 40 CFR 262, Subpart B, mean the manifest provisions of 329 IAC 3.1-7.
- (3) Delete 40 CFR 263.11(b) and substitute "A transporter who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned."
- (4) Delete 40 CFR 263.20(h).
- (5) In 40 CFR 263.22(e), the period of retention referred to may also be extended by the commissioner.
- (6) In addition to the notices and reports required by 40 CFR 263.30 in the event of discharges of hazardous waste during transportation, the transporter must also comply with the notice requirements of 327 IAC 2-6.1. These requirements are described in section 3 of this rule.
- (7) In addition to the requirements for hazardous waste transfer facilities under 40 CFR 263.12, owners or operators of hazardous waste transfer facilities must also comply with section 4 of this rule as applicable.

(Solid Waste Management Board; 329 IAC 3.1-8-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 934; filed May 28, 1998, 5:01 p.m.: 21 IR 3814; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1099; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-8-3 Hazardous waste discharges; additional state requirements

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 263.30

Sec. 3. (a) Whenever a spill or release of hazardous waste occurs, immediately communicate a spill report to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana).

(b) If applicable, immediately, whenever possible, notify the nearest downstream water user.

(c) Submit to the office of land quality reports on the spill deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6 [327 IAC 2-6 was repealed filed Feb 25, 1997, 1:00 p.m.: 20 IR 1734. See 327 IAC 2-6.1.]. *(Solid Waste Management Board; 329 IAC 3.1-8-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Nov 24, 1998, 3:03 p.m.: 22 IR 1074; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-8-4 Hazardous waste transfer facilities; additional state requirements

Authority: IC 13-14-1; IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2-4; 40 CFR 263.12

Sec. 4. (a) This section is applicable to owners or operators of hazardous waste transfer facilities as defined under 40 CFR 260.10 who perform one (1) or more of the following activities during the normal course of transportation subsequent to shipment from the generator and prior to arrival at the designated facility:

- (1) Mix hazardous waste.
- (2) Combine hazardous waste.
- (3) Comingle hazardous waste.
- (4) Bulk hazardous waste.
- (5) Repackage hazardous waste, except in response to leaking containers or containers in poor condition.
- (6) Pump hazardous waste from one (1) vehicle to another.
- (7) Transfer hazardous waste (including containerized hazardous waste) from one (1) vehicle to another.

(8) Open hazardous waste containers for purposes other than for sampling.

(b) Owners or operators of existing hazardous waste transfer facilities who conduct the activities described in subsection (a) must submit written notification to the Indiana Department of Environmental Management, Office of Land Quality, Hazardous Waste Data Analysis Section, 100 North Senate Avenue, P.O. Box 7035, Indianapolis, Indiana 46207-7035, within thirty (30) days after the effective date of this section. Notification must include the following:

(1) Hazardous waste transfer facility:

- (A) name;
- (B) location and mailing address;
- (C) telephone number;
- (D) owner's name;
- (E) owner's mailing address;
- (F) owner's telephone number;
- (G) operator's name;
- (H) operator's mailing address; and
- (I) operator's telephone number.

(2) A description of the hazardous waste management activities as listed in subsection (a) that the owner or operator of the hazardous waste transfer facility conducts.

(c) Owners or operators of new hazardous waste transfer facilities who intend to conduct the activities described in subsection (a) must submit written notification to the Indiana Department of Environmental Management, Office of Land Quality, Hazardous Waste Data Analysis Section, 100 North Senate Avenue, P.O. Box 7035, Indianapolis, Indiana 46207-7035, at least thirty (30) days before the hazardous waste management activities described in subsection (a) begin. Notification must include the following:

(1) Hazardous waste transfer facility:

- (A) name;
- (B) location and mailing address;
- (C) telephone number;
- (D) owner's name;
- (E) owner's mailing address;
- (F) owner's telephone number;
- (G) operator's name;
- (H) operator's mailing address; and
- (I) operator's telephone number.

(2) A description of the hazardous waste management activities as listed in subsection (a) that the owner or operator of the hazardous waste transfer facility intends to conduct.

(d) Owners or operators of all hazardous waste transfer facilities who conduct the activities described in subsection (a) must maintain and operate the hazardous waste transfer facilities to prevent hazardous waste and hazardous waste constituents from escaping:

- (1) into the soil;
- (2) directly or indirectly into surface or ground water; or
- (3) into drains or sewers.

(e) This section is not applicable to household hazardous waste collection points. (*Solid Waste Management Board; 329 IAC 3.1-8-4; filed May 28, 1998, 5:01 p.m.: 21 IR 3814; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 9. Final Permit Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-9-1 Adoption of federal standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR 264)

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 13-7-8.5; 40 CFR 264

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Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 264 is hereby incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-9-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-9-2 Exceptions and additions; final permit standards

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:

(1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.

(2) In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(3) Reports to the state required at 40 CFR 264.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

(4) The written spill report required by 40 CFR 264.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.

(5) In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".

(6) In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

(7) In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the commissioner.

(B) In addition to the paper copies required in clause (A), an electronic report in a format prescribed by the commissioner.

(d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner."

(8) Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.

(9) Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

(10) In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

(11) Delete 40 CFR 264.301(l).

(12) Delete 40 CFR 264, Appendix VI.

(13) In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

(14) In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".

(*Solid Waste Management Board; 329 IAC 3.1-9-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112*)

329 IAC 3.1-9-3 Exceptions and additions; tank systems

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264, Subpart J

Sec. 3. (a) In 40 CFR 264.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.

(b) In 40 CFR 264.191(c), delete "July 14, 1986" and insert "June 20, 1988".

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(c) In 40 CFR 264.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the following:

- (1) Secondary containment must be provided by January 12, 1989, for tank systems which meet all criteria described as follows:
 - (A) The tank system is an interim status or permitted unit.
 - (B) The tank system is underground and cannot be entered for inspection.
 - (C) The tank system is used to treat or store EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.
- (2) Secondary containment must be provided by June 20, 1990, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivision (1).
 - (B) The tank is used to treat or store EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.
- (3) Secondary containment must be provided by January 12, 1989, or when the tank system reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivision (1) or (2).
 - (B) The tank system is an interim status or permitted unit.
 - (C) The tank system is underground and cannot be entered for inspection.
 - (D) The tank system's age is known and documentable.
- (4) Secondary containment must be provided by June 20, 1990, or when the tank system reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivisions (1) through (3).
 - (B) The tank system's age is known and documentable.
- (5) Secondary containment must be provided by January 12, 1989, or when the facility reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivisions (1) through (4).
 - (B) The tank system is an interim status or permitted unit.
 - (C) The tank system is underground and cannot be entered for inspection.
 - (D) The tank system's age is unknown.
 - (E) The facility's age is greater than seven (7) years old by January 12, 1987.
- (6) Secondary containment must be provided by June 20, 1990, or when the facility reaches fifteen (15) years of age, whichever is later, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivisions (1) through (5).
 - (B) The tank system's age is unknown.
 - (C) The facility's age is greater than seven (7) years old by June 19, 1988.
- (7) Secondary containment must be provided by January 12, 1995, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivisions (1) through (6).
 - (B) The tank system is an interim status or permitted unit.
 - (C) The tank system is underground and cannot be entered for inspection.
 - (D) The tank system's age is unknown.
 - (E) The facility's age is less than seven (7) years old by January 12, 1987.
- (8) Secondary containment must be provided by June 20, 1996, for tank systems which meet all criteria described as follows:
 - (A) The tank system does not meet the criteria in subdivisions (1) through (7).
 - (B) The tank system's age is unknown.
 - (C) The facility's age is less than seven (7) years old by June 19, 1988.

(Solid Waste Management Board; 329 IAC 3.1-9-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 936; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 10. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-10-1 Adoption of federal interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR 265)

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5
Affected: IC 13-7-8.5; 40 CFR 265

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 265 is hereby incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-10-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; filed May 6, 1994, 5:00 p.m.: 17 IR 2064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-10-2 Exceptions and additions; interim status standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 265

Sec. 2. Exceptions and additions to federal interim status standards are as follows:

- (1) In 40 CFR 265.1(a) dealing with scope of the permit, delete “national” and insert “state”.
- (2) In 40 CFR 265.1(b), delete “section 3005 of RCRA” and insert “329 IAC 3.1-13” in both places where it occurs.
- (3) Delete 40 CFR 265.1(c)(4).
- (4) In 40 CFR 265.4 dealing with imminent hazard action, delete “7003 of RCRA” and insert “IC 13-30-3 and IC 13-14-10”.
- (5) Reports to the state required at 40 CFR 265.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.
- (6) The written spill report required by 40 CFR 265.56(j) must also include information deemed necessary by the commissioner or the commissioner’s authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.
- (7) In 40 CFR 265.75 dealing with the biennial report, delete “EPA form 8700-13B” and insert “form provided by the commissioner”.
- (8) In 40 CFR 265.76 dealing with unmanifested waste reports, delete “The unmanifested waste report must be submitted on EPA form 8700-13B”.
- (9) In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (c), “Ground water data for laboratory analytical results and field parameters must be submitted as follows:
 - (A) Two (2) paper copies on the most current form prescribed by the department.
 - (B) In addition to the paper copies required in (A), an electronic report in a format prescribed by the department.”.
- (10) In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (d), “The commissioner may request other information as required by Subparts AA through CC of this part be submitted in an electronic format as prescribed by the commissioner.”.
- (11) In 40 CFR 265.90 dealing with ground water monitoring requirements, delete all references to effective date.
- (12) Delete 40 CFR 265.112(d)(3)(ii) and substitute: “Issuance of a judicial decree or final order under section 3008 of RCRA, judiciary decree under IC 13-30-3, or final administrative order under IC 4-21.5 to cease receiving hazardous waste or close”.
- (13) Delete 40 CFR 265.118(e)(2) and substitute the language in subdivision (11).
- (14) Delete 40 CFR 265, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-14.
- (15) In 40 CFR 265.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.
- (16) In 40 CFR 265.191(c), delete “July 14, 1986” and insert “June 20, 1988”.
- (17) In 40 CFR 265.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the dates specified in 329 IAC 3.1-9-3(c)(1) through 329 IAC 3.1-9-3(c)(8).
- (18) In 40 CFR 265.301(d)(2)(i)(B) dealing with the definition of the term “underground source of drinking water”, delete “144.3 of this chapter” and insert “40 CFR 270.2”.
- (19) In 40 CFR 265.301(d)(2)(i)(C), delete “RCRA Section 3005(c)” and insert “329 IAC 3.1-13”.
- (20) In 40 CFR 265.314(g)(2) dealing with the definition of the term “underground source of drinking water”, delete “144.3 of this chapter” and insert “40 CFR 270.2”.

(21) In 40 CFR 265.316(b), delete “(49 CFR Parts 178 and 179)” and substitute “(49 CFR Part 178)”.

(22) In 40 CFR 265.316(f), delete “fiber drums” and substitute “nonmetal containers”.

(23) Delete 40 CFR 265.430(b) and substitute the following: “The requirements of this subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I and Class IV in section 3 of this rule.”.

(Solid Waste Management Board; 329 IAC 3.1-10-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3357; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1113; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2742; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2434; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3113)

329 IAC 3.1-10-3 Classification of underground injection wells

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5

Affected: IC 13-7-8.5; 40 CFR 144.6; 40 CFR 265.430

Sec. 3. (a) Class I wells are wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-fourth ($\frac{1}{4}$) of a mile of the well bore, an underground source of drinking water. Class I wells also include other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-fourth ($\frac{1}{4}$) of a mile of the well bore, an underground source of drinking water.

(b) Class II wells are wells which inject fluids described as follows:

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas.

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) Class III wells are wells which inject for extraction of minerals including the following:

(1) Mining of sulfur by the Frasch process.

(2) In situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V wells.

(3) Solution mining of salts of potash.

(d) Class IV wells are wells described as follows:

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites, to dispose of hazardous waste or radioactive waste into a formation which within one-fourth ($\frac{1}{4}$) of a mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter ($\frac{1}{4}$) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste facilities to dispose of hazardous waste, which cannot be classified under subsection (a) or this subsection, for example, wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to 40 CFR 146.04.

(e) Class V wells are injection wells not included in Class I, II, III, or IV. *(Solid Waste Management Board; 329 IAC 3.1-10-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 938; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 11. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

329 IAC 3.1-11-1 Adoption of federal standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 266

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 266 is hereby incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-11-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-11-2 Exceptions and additions; specific standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2; 40 CFR 266

Sec. 2. Exceptions and additions to standards for the management of specific hazardous waste and specific types of hazardous waste facilities are as follows:

(1) Delete 40 CFR 266.23(b) and substitute the following: "No person may apply or allow the application of used oil as defined in 329 IAC 3.1-4 to any ground surface except for purposes of treatment in accordance with a permit issued by the department under IC 13-15-2. The use of unused waste oil or other waste material, which is contaminated with dioxin or hazardous waste or exhibits any characteristic of hazardous waste except ignitability for dust suppression or road treatment is prohibited."

(2) In 40 CFR 266.102(a)(2)(viii) dealing with applicable financial requirements for burners, the references to federal cites shall be converted as follows:

- (A) 264.141 means 329 IAC 3.1-15-2.
- (B) 264.142 means 329 IAC 3.1-15-3.
- (C) 264.143 means 329 IAC 3.1-15-4.
- (D) 264.147 through 264.151 means 329 IAC 3.1-15-8 through 329 IAC 3.1-15-10.

(3) Delete 40 CFR 266.80(b) and substitute the following: "Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:

- (A) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.
- (B) All applicable provisions in the following subparts of 40 CFR 264:
 - (i) Subpart A through subpart B, excluding 40 CFR 264.13.
 - (ii) Subpart C through subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.
 - (iii) Subpart F through subpart L.
- (C) All applicable provisions in the following subparts of 40 CFR 265:
 - (i) Subpart A through subpart B, excluding 40 CFR 265.13.
 - (ii) Subpart C through subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72.
 - (iii) Subpart F through subpart L.
- (D) All applicable provisions in 40 CFR 270 and 40 CFR 124."

(*Solid Waste Management Board; 329 IAC 3.1-11-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 12. Land Disposal Restrictions

329 IAC 3.1-12-1 Adoption of federal land disposal restrictions

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5
Affected: IC 13-7-8.5; 40 CFR 268

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 268 is hereby incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-12-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed May 6, 1994, 5:00 p.m.: 17 IR 2065;*

readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-12-2 Exceptions and additions; land disposal restrictions

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 268

Sec. 2. Exceptions and additions to land disposal restrictions are as follows:

(1) Primacy for granting exemptions from land disposal restrictions incorporated in this rule are retained as federal authorities and must be granted by the administrator of the EPA. Exemptions for which federal primacy is retained are described as follows:

(A) Case-by-case extensions to federal effective dates pursuant to 40 CFR 268.5.

(B) Petitions to allow land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to 40 CFR 268.6.

(C) Approval of alternate treatment methods pursuant to 40 CFR 268.42(b).

(D) Exemption from a treatment standard pursuant to 40 CFR 268.44.

(2) For the reason described in subdivision (1), delete the following:

(A) 40 CFR 268.5.

(B) 40 CFR 268.6.

(C) 40 CFR 268.42(b).

(D) 40 CFR 268.44.

(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.

(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes which are not identified or listed in 40 CFR 268, Subpart C, as incorporated in this rule.

(5) In 40 CFR 268.2(e), delete "40 CFR 761.3" and insert "329 IAC 4" [329 IAC 4 was repealed filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083].

(6) Delete 40 CFR 268.8.

(7) Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to the requirements of 40 CFR 268.7, except that once the waste is no longer hazardous, a one (1) time notification and certification must be placed in the generator's or treater's files and sent to the commissioner. The notification must include the following information:

(A) The name and address of the solid waste facility receiving the waste shipment.

(B) A description of the waste as initially generated, including the applicable EPA hazardous waste number.

(C) The treatment standards applicable to the waste at the initial point of generation.

(D) The certification must be signed by an authorized representative and must state the language found in 40 CFR 268.7(b)(5)(i).

The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the facility receiving the waste changes.

(8) Delete 40 CFR 268, Subpart B.

(9) In 40 CFR 268, Subpart C, all references to effective dates which precede the effective date of this rule shall be replaced with the effective date of this rule.

(10) Delete 40 CFR 268.33.

(Solid Waste Management Board; 329 IAC 3.1-12-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3366; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1639; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2435)

Rule 13. State Administered Permit Program

329 IAC 3.1-13-1 Adoption of federal procedures for state administered permit program

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5

Affected: IC 13-7-8.5; 40 CFR 270

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 270 is hereby incorporated by reference. *(Solid Waste*

Management Board; 329 IAC 3.1-13-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed May 6, 1994, 5:00 p.m.: 17 IR 2065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-2 Exceptions and additions; permit program

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 4-21.5; IC 13-22-2; 40 CFR 270

Sec. 2. Exceptions and additions to federal procedures for the state administered permit program are as follows:

- (1) Delete 40 CFR 270.1(a) dealing with scope of the permit program and substitute the following: This rule establishes provisions for the state hazardous waste program pursuant to IC 13-15 and IC 13-22-3.
- (2) In addition to the procedures of 40 CFR 270 as incorporated in this rule, sections 3 through 17 of this rule set forth additional state procedures for denying, issuing, modifying, revoking and reissuing, and terminating all final state permits other than "emergency permits" and "permits by rule".
- (3) Delete 40 CFR 270.1(b).
- (4) Delete 40 CFR 270.3.
- (5) Delete 40 CFR 270.10 dealing with general permit application requirements and substitute section 3 of this rule.
- (6) Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.
- (7) Delete 40 CFR 270.14(b)(18).
- (8) Delete 40 CFR 270.14(b)(20).
- (9) In 40 CFR 270.32(a), delete references to "alternate schedules of compliance" and "considerations under federal law". These references in the federal permit requirements are only applicable to federally issued permits.
- (10) Delete 40 CFR 270.32(c) dealing with the establishment of permit conditions and substitute the following: If new requirements become effective, including any interim final regulations, during the permitting process which are:
 - (A) prior to modification, or revocation and reissuance, of a permit to the extent allowed in this rule; and
 - (B) of sufficient magnitude to make additional proceeding desirable, the commissioner shall at her discretion, reopen the comment period.
- (11) Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.
- (12) Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.
- (13) Delete 40 CFR 270.64.
- (14) In addition to the criteria described in 40 CFR 270.73, interim status may also be terminated pursuant to a judicial decree under IC 13-30 or final administrative order under IC 4-21.5.

(Solid Waste Management Board; 329 IAC 3.1-13-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436)

329 IAC 3.1-13-3 General application requirements

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 270.10

Sec. 3. (a) Any person who is required to have a permit, including a new applicant and a permittee with an expiring permit, shall complete, sign, and submit an application to the commissioner as described in this section and 40 CFR 270.70 through 40 CFR 270.73. Persons currently authorized with interim status shall apply for permits when required by the commissioner. Persons covered by permits by rule as provided for in 40 CFR 270.60 need not apply. Procedures for applications, issuance, and administration of emergency permits are found in 40 CFR 270.61. Procedures for application, issuance, and administration of research, development, and demonstration permits are found in 40 CFR 270.65.

(b) When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application.

(c) The commissioner shall not issue a permit before receiving a complete application for a permit except for permits-by-rule, or emergency permits. An application for a permit is complete when the commissioner receives an application form and any supplemental information which are completed to her satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection (j).

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(d) All applicants for final state permits shall provide information set forth in 40 CFR 270.13 and applicable sections in 40 CFR 270.14 through 40 CFR 270.21 to the commissioner, using the application form provided by the commissioner.

(e) Existing hazardous waste management facilities and interim status qualifications are as follows:

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under IC 13 that render the facility subject to the requirement to have a final state permit must submit Part A of the permit application no later than:

(A) thirty (30) days after the effective date of this article, or revision of this article, which first requires compliance under 329 IAC 3.1-10 or 329 IAC 3.1-11, unless the publication date is more than four (4) months prior to the effective date, in which case Part A of the permit application must be submitted no later than the effective date; or

(B) thirty (30) days after the date they first become subject to the standards set forth in 329 IAC 3.1-10 or 329 IAC 3.1-11;

whichever occurs first. For purposes of this rule, those persons who were in compliance with 329 IAC 3-34, which was repealed in 1992, will be deemed to be in compliance with this subdivision. For generators generating greater than one hundred (100) kilograms but less than one thousand (1,000) kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

(2) The commissioner may, by an order issued under IC 13-30-3, extend the date by which the owner and operator of an existing hazardous waste management facility must submit Part A of the permit application.

(3) At any time after the effective date of this article, the owner and operator of an existing hazardous waste management facility may be required to submit a final state permit application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit their final state permit application at any time. Any owner or operator shall be allowed at least six (6) months from the date of the requirement to submit the final state permit application. Notwithstanding this subdivision, any owner or operator of an existing hazardous waste management facility must submit a Part B permit application in accordance with the dates specified in 40 CFR 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under IC 13 that render the facility subject to the requirement to have a final state permit must submit a Part B application in accordance with the dates specified in 40 CFR 270.73.

(4) Failure to furnish a requested final state permit application on time, or to furnish in full the information required by the application, is grounds for termination of interim status under this rule.

(f) No person shall begin physical construction or operation of a new hazardous waste management facility without having complied with IC 13-22-10, if applicable, and having received a finally effective final state permit pursuant to this rule.

(g) The requirements for updating permit applications are as follows:

(1) If any owner or operator of a hazardous waste management facility has filed a Part A permit application pursuant to subsection (e)(1) and has not yet filed a final state permit application, the owner or operator shall file an amended Part A application:

(A) with the commissioner no later than thirty (30) days from the effective date of regulatory provisions listing or designating wastes as hazardous in the state in addition to those already listed or designated by the state, if the facility is treating, storing, recovering, or disposing of any of those newly listed or designated wastes; or

(B) as necessary to comply with provisions of 40 CFR 270.72 for changes during interim status.

Revised permit applications necessary to comply with the provisions of 40 CFR 270.72 shall be filed with the commissioner.

(2) The owner or operator of a facility who fails to comply with the updating requirements of subdivision (1) does not receive interim status as to the wastes not covered by a duly filed Part A permit application.

(h) Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the effective permit, unless permission for a later date has been granted by the commissioner. The commissioner shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(i) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this rule for a period of at least three (3) years from the date the application is signed.

(j) Exposure information requirements are as follows:

(1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous

constituents through releases related to the unit. At a minimum, such information must address the following:

(A) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit.

(B) The potential pathways of human exposures to hazardous wastes or constituents resulting from the releases described under clause (A).

(C) The potential magnitude and nature of the human exposure resulting from the releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in subdivision (1).

(k) The commissioner may require a permittee or an applicant to submit information in order to establish permit conditions under 40 CFR 270.32(b)(2) and 40 CFR 270.50(d). (*Solid Waste Management Board; 329 IAC 3.1-13-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 941; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3359; errata filed Feb 4, 1998, 4:10 p.m.: 21 IR 2129; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-4 Confidentiality of information

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; 40 CFR 270.12

Sec. 4. (a) Any information submitted to the state pursuant to this rule may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission. Claims of confidentiality must be made in compliance with the applicable portions of 329 IAC 6.1. If no claim is made at the time of submission, the state may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures contained in 329 IAC 6.1.

(b) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied. (*Solid Waste Management Board; 329 IAC 3.1-13-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-5 Federal issuance of hazardous waste management permits

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5

Sec. 5. (a) All hazardous waste management permits issued by the EPA pursuant to 40 CFR 270 shall be called in within one hundred eighty (180) days after final authorization of the Indiana hazardous waste management program pursuant to 40 CFR 271.

(b) These federally issued permits shall be reviewed and, if determination is made to issue, reissued as final (state) permits pursuant to this rule. (*Solid Waste Management Board; 329 IAC 3.1-13-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-6 Permit processing

Authority: IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; IC 13-7-10.2; 40 CFR 124.3

Sec. 6. The commissioner shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit in this rule and the requirements of IC 13-7-10.2. (*Solid Waste Management Board; 329 IAC 3.1-13-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-7 Modification, revocation and reissuance, or termination of permits

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 4-21.5; IC 13-15-7; IC 13-22-2; 40 CFR 124.5

Sec. 7. (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the commissioner's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR 270.41 through 40 CFR 270.43. All requests shall be in writing and shall contain

facts or reasons supporting the request.

(b) If the commissioner tentatively decides to modify or revoke and reissue a permit under this rule, she shall prepare a draft permit under section 8 of this rule incorporating the proposed changes. The commissioner may request additional information and, in the case of a modified permit, require the submission of an updated final permit application. In the case of revoked and reissued permits, the commissioner shall require the submission of a new application.

(c) IC 13-15-7 governs the modification and the revocation and reissuance of permits. In addition, when a permit is revoked and reissued under this rule, the entire permit is reopened just as if the permit had expired and was being reissued.

(d) If a permit modification is requested by the permittee, the commissioner shall approve or deny the request according to the procedures in 40 CFR 270.42.

(e) If the commissioner decides to terminate a permit under this rule, she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 8 of this rule.

(f) A denial of a request to modify, revoke and reissue, or terminate a permit shall be in accordance with IC 4-21.5. (*Solid Waste Management Board; 329 IAC 3.1-13-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3360; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-8 Draft permits

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 124.6

Sec. 8. (a) Once an application is submitted, the commissioner shall either prepare a draft permit to issue a final state permit or prepare a draft permit to deny the final state permit.

(b) A draft permit prepared by the commissioner shall contain the following information:

(1) All conditions under 40 CFR 270.30 and 40 CFR 270.32.

(2) All compliance schedules under 40 CFR 270.33.

(3) All monitoring requirements under 40 CFR 270.31.

(4) Standards for treatment, storage, recovery, and/or disposal and other permit conditions under 40 CFR 270.30.

(c) All draft permits prepared under this section shall be:

(1) accompanied by a fact sheet under section 9 of this rule;

(2) publicly noticed under section 10 of this rule; and

(3) made available for public comment under section 11 of this rule.

(d) The commissioner shall:

(1) give notice of opportunity for a public hearing under section 12 of this rule;

(2) issue a final decision under section 14 of this rule; and

(3) respond to comments under section 13 of this rule.

(*Solid Waste Management Board; 329 IAC 3.1-13-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 943; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3361; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-9 Fact sheet

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; 40 CFR 124.8

Sec. 9. (a) A fact sheet shall be prepared for every draft permit for a hazardous waste management facility. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the applicant and, upon request, to any other person.

(b) The fact sheet shall include, when applicable, the following:

(1) A brief description of the type of facility or activity which is the subject of the draft permit.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, recovered, stored, disposed of, injected, emitted, or discharged.

(3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.

- (4) Reasons why any requested variance or alternatives to required standards do or do not appear justified.
- (5) A description of the procedures for reaching a final decision on the draft permit including the following:
 - (A) The beginning and ending dates of the comment period under section 10 of this rule and the address where comments will be received.
 - (B) Procedures for requesting a hearing and the nature of that hearing.
 - (C) Any other procedures by which the public may participate in the final decision.
- (6) Name and telephone number of a person to contact for additional information.

(Solid Waste Management Board; 329 IAC 3.1-13-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 943; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-10 Public notice of permit actions and public comment period

Authority: IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; 40 CFR 124.10

Sec. 10. (a) The commissioner shall give public notice that either of the following actions have occurred:

(1) A draft permit has been prepared under section 8 of this rule.

(2) A hearing has been scheduled under section 12 of this rule.

(b) Timing for public notices shall be as follows:

(1) Public notice of the preparation of a draft permit required under subsection (a) shall allow at least forty-five (45) days for public comment.

(2) Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two (2) notices may be combined.

(c) Public notice of activities described in subsection (a) shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this section may waive his or her rights to receive notice for any classes and categories of permits.):

(A) The applicant.

(B) Any other agency which the commissioner knows has issued or is required to issue a UIC or 404 permit (See 33 U.S.C. 1344.) for the same facility or activity.

(C) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the advisory council on historic preservation, state historic preservation officers, and other appropriate government authorities, including any affected states.

(D) Persons on a mailing list developed as follows:

(i) Including those who request in writing to be on the list.

(ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area.

(iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals.

The commissioner may update the mailing list from time to time by requesting written indication of continued interest from those listed. The commissioner may delete from the list the name of any person who fails to respond to such a request.

(E) Any unit of local government having jurisdiction over the area where the facility is located or is proposed to be located.

(F) Each state agency having any authority under state law with respect to the construction or operation of such facility.

(2) By publication of a notice in a daily or weekly major newspaper of general circulation and broadcast over local radio stations.

(3) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) All public notices issued shall contain the following minimum information:

(1) Name and address of the office processing the permit action for which notice is being given.

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted or proposed to be conducted at the facility or activity described in the permit application.

(4) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application.

(5) A brief description of the comment procedures required by sections 11 through 13 of this rule and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a public hearing has already been scheduled) and other procedures by which the public may participate in the permit decision.

(6) Any additional information considered necessary or proper.

(e) In addition to the general public notice described in subsection (d), the public notice of a public hearing under section 12 of this rule shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit.

(2) Date, time, and place of the public hearing.

(3) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures.

(f) In addition to the general public notice described in subsection (d), all persons identified in subsection (c) shall be mailed a copy of the fact sheet. (*Solid Waste Management Board; 329 IAC 3.1-13-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 944; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-11 Public comments and requests for public hearings

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; 40 CFR 124.11

Sec. 11. During the public comment period provided under section 10 of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the public hearing. All comments shall be considered in making the decision and answered as provided in section 13 of this rule. (*Solid Waste Management Board; 329 IAC 3.1-13-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-12 Public hearings

Authority: IC 13-7-7; IC 13-7-8.5-4

Affected: IC 13-7-8.5; IC 13-15-5-1; 40 CFR 124.12

Sec. 12. (a) The commissioner shall hold a public hearing whenever required under IC 13-15-5-1 or whenever she finds, on the basis of requests, a significant degree of public interest in a draft permit, or as follows:

(1) The commissioner may also hold a public hearing at her discretion whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) The commissioner shall hold a public hearing whenever she receives written notice or opposition to a draft permit and a request for a public hearing within forty-five (45) days of public notice under section 10 of this rule.

(3) Whenever possible, the commissioner shall schedule a public hearing under this section at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the public hearing shall be given as specified in section 10 of this rule.

(b) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section 10 of this rule shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) A tape recording or written transcript of the public hearing shall be made available to the public. (*Solid Waste Management Board; 329 IAC 3.1-13-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-13 Response to comments

Authority: IC 13-7-7; IC 13-7-8.5-4

Affected: IC 4-21.5-3-5; IC 13-7-8.5; 40 CFR 124.17

Sec. 13. (a) At the time that a permit decision is issued under section 14 of this rule, the commissioner shall issue a response to comments. This response shall do the following:

- (1) Specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change.
- (2) Briefly describe and respond to all significant comments on the draft permit.
- (3) Explain the right to request an adjudicatory hearing on the permit as specified in IC 4-21.5-3-5.

(b) The response to comments shall be mailed to the persons identified in section 10 of this rule and made available to the public. (*Solid Waste Management Board; 329 IAC 3.1-13-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-14 Issuance and effective date of permit

Authority: IC 13-7-7-5; IC 13-7-10
Affected: IC 4-21.5; IC 13-7

Sec. 14. After the close of the public comment period (including any public hearing) required by section 10 of this rule on a draft permit, the commissioner shall issue a permit decision and shall follow the procedures of IC 4-21.5. (*Solid Waste Management Board; 329 IAC 3.1-13-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-15 State-administered permit program; duration of permits

Authority: IC 13-14-8; IC 13-15-2; IC 13-15-3-2
Affected: IC 13-22-2; 40 CFR 270.50

Sec. 15. (a) State permits shall be effective for a fixed term not to exceed five (5) years, except permits for post-closure activities shall be effective for a fixed term not to exceed ten (10) years.

(b) Except as provided in section 16(a) of this rule, the term of a permit shall not be extended by modification beyond five (5) years.

(c) The commissioner may issue any permit for a duration that is less than five (5) years. (*Solid Waste Management Board; 329 IAC 3.1-13-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1099; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-16 Continuation of expiring permits

Authority: IC 13-7-7-5; IC 13-7-10
Affected: IC 13-15-3-6; 40 CFR 270.51

Sec. 16. (a) The conditions of an expired permit continue in force under IC 13-15-3-6 until the effective date of a new permit if:

- (1) the permittee has submitted a complete and timely application under IC 13-15-3-6, 40 CFR 270.14, and the applicable sections in 40 CFR 270.21 which is a complete (section 3 of this rule) application for a new permit; and
- (2) the commissioner, through no fault of the permittee, does not issue a new permit with an effective date under section 14 of this rule on or before the expiration date of the previous permit.

(b) Permits continued under this section remain fully effective and enforceable.

(c) When the permittee is not in compliance with the conditions of the expiring or expired permit, the commissioner may choose to do any or all of the following:

- (1) Initiate enforcement action based upon the permit which has been continued.
- (2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit.
- (3) Issue a new permit under this rule with appropriate conditions.
- (4) Take other actions authorized by this article.

(*Solid Waste Management Board; 329 IAC 3.1-13-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 945; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-17 Adjudicatory hearings

Authority: IC 13-7-7-5; IC 13-7-10-4

Affected: IC 4-21.5; IC 13-1-3; IC 13-7

Sec. 17. The procedures for the conduct of adjudicatory hearings regarding permits are prescribed under IC 4-21.5. (*Solid Waste Management Board; 329 IAC 3.1-13-17; filed Jan 24, 1992, 2:00 p.m.: 15 IR 946; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-13-18 Preapplication public meeting and notice

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 124.31

Sec. 18. (a) This section applies to the following:

(1) All RCRA Part B applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority.

(2) RCRA Part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations.

(b) This section does not apply to the following:

(1) Permit modifications under 40 CFR 270.42.

(2) Applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) As used in this section, "significant change" means any change that would qualify as a Class 3 permit modification under 40 CFR 270.42.

(d) Prior to the submission of a Part B RCRA permit application for a facility, the applicant shall:

(1) hold at least one (1) meeting with the public in order to solicit questions and comments from the community and interested parties and inform the community and interested parties of proposed hazardous waste management activities; and

(2) post a sign-in sheet or otherwise provide a voluntary opportunity for attendees and interested parties to provide their names and addresses.

(e) The applicant shall submit the following to the department as a part of the Part B application in accordance with 40 CFR 270.14(b):

(1) A summary of the meeting.

(2) The list of attendees and their addresses developed under subsection (d).

(3) Copies of any written comments or materials submitted at the meeting.

(f) The applicant shall provide public notice of the preapplication meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department upon request, documentation of the public notice required under subsection (g).

(g) The applicant shall provide public notice in all of the following forms:

(1) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection (h), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the commissioner shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the commissioner determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(2) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subsection (h). If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(3) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subsection (h), at least once on at least one (1) local radio station or television station. The applicant may employ another medium with prior approval of the commissioner.

(4) A notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with section 10(c)(1)(F) of this rule.

(h) The notices required under subsection (g) must include the following:

- (1) The date, time, and location of the meeting.
- (2) A brief description of the purpose of the meeting.
- (3) A brief description of the facility and proposed operations, including the address or a map, for example, a sketched or copied street map, of the facility location.
- (4) A statement encouraging people to contact the applicant at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting.
- (5) The name, address, and telephone number of a contact person for the applicant.

(Solid Waste Management Board; 329 IAC 3.1-13-18; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1114; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-13-19 Public notice requirements at the application stage

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 124.32

Sec. 19. (a) This section applies to the following:

(1) All RCRA Part B applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority.

(2) RCRA Part B applications seeking renewal of permits for such units under 40 CFR 270.51.

(b) This section does not apply to the following:

(1) Permit modifications under 40 CFR 270.42.

(2) Applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) Requirements for notification at application submittal shall be as follows:

(1) The commissioner shall provide public notice as set forth in section 10(c)(1)(D) of this rule, and notice to appropriate units of state and local government as set forth in section 10(c)(1)(F) of this rule, that a Part B permit application has been submitted to the department and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the commissioner.

The notice must include the following:

(A) The name and telephone number of the applicant's contact person.

(B) The name and telephone number of the department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process.

(C) An address to which interested parties can write in order to be put on the applicant's mailing list.

(D) The location where copies of the permit application and any supporting documents can be viewed and copied.

(E) A brief description of the facility and proposed operations, including the address or a map, for example, a sketched or copied street map, of the facility location on the front page of the notice.

(F) The date that the application was submitted.

(d) Concurrent with the notice required under subsection (c), the commissioner must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office. *(Solid Waste Management Board; 329 IAC 3.1-13-19; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1115; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-13-20 Information repository

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 124.33

Sec. 20. (a) This section applies to all applicants seeking RCRA permits for hazardous waste management units over which the department has permit issuance authority.

(b) The commissioner may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the commissioner shall consider a variety of factors, including the following:

(1) The level of public interest.

(2) The type of facility.

- (3) The presence of an existing repository.
- (4) The proximity to the nearest copy of the administrative record.

If the commissioner determines, at any time after submittal of a permit application, that there is a need for a repository, then the commissioner shall notify the applicant that he or she must establish and maintain an information repository. See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the commissioner to fulfill the purposes for which the repository is established. The commissioner shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the applicant. If the commissioner finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the commissioner shall specify a more appropriate site.

(e) The commissioner shall specify requirements for informing the public about the information repository. At a minimum, the commissioner shall require the applicant to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner or operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the commissioner. The commissioner may close the repository at his or her discretion, based on the factors in subsection (b). (*Solid Waste Management Board; 329 IAC 3.1-13-20; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1115; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 14. Financial Requirements for Owners and Operators of Interim Status Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-14-1 Applicability

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.140

Sec. 1. (a) The requirements of sections 3 through 12 and 24 through 40 of this rule apply to owners or operators of all hazardous waste facilities, except as provided otherwise in this section or are excluded from permit requirements in 40 CFR 265.1.

(b) The requirements of sections 13 through 22 of this rule apply only to owners and operators of:

- (1) disposal facilities;
- (2) tank systems that are required under 40 CFR 265.197 to meet the requirements for landfills; and
- (3) containment buildings that are required under 40 CFR 265.1102 to meet the requirements for landfills.

(c) States and the federal government are exempt from the requirements of this rule. (*Solid Waste Management Board; 329 IAC 3.1-14-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 946; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1971; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3361; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-2 Definitions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.141

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Closure plan" means the plan for closure prepared in accordance with the requirements of 40 CFR 265.112.

(c) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with section 3(a) through 3(c) of this rule.

(d) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with section 13(a) through 13(c) of this rule.

(e) "Parent corporation" means a corporation that directly owns at least fifty percent (50%) of the voting stock of the corporation that is the facility owner or operator; the corporation that is the facility owner or operator is deemed a subsidiary of the parent corporation.

(f) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of 40 CFR 265.117 through 40 CFR 265.120.

(g) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage, are intended to assist in the understanding of this rule, and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

- (1) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.
- (2) "Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.
- (3) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of the existing resources properly classifiable as current assets or the creation of other current liabilities.
- (4) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.
- (5) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
- (6) "Net working capital" means current assets minus current liabilities.
- (7) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.
- (8) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as good will and rights to patents or royalties.

(h) In the liability insurance requirements in section 24 of this rule, the terms "bodily injury" and "property damage" must have the meanings given these terms by Indiana law. However, these terms do not include those liabilities, which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The board intends the meanings of other terms used in the liability insurance requirements in section 24 of this rule to be consistent with their common meanings within the insurance industry. The following definitions are intended to assist in the understanding of this rule and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

- (1) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.
- (2) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.
- (3) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.
- (4) "Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

(Solid Waste Management Board; 329 IAC 3.1-14-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 946; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1971; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-3 Cost estimate for closure

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2

Sec. 3. (a) The owner or operator shall keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 265.111 through 40 CFR 265.115, applicable closure requirements of 40 CFR 265.178, 40 CFR 265.197, 40 CFR 265.228, 40 CFR 265.258, 40 CFR 265.280, 40 CFR 265.310, 40 CFR 265.351, 40 CFR 265.381, 40 CFR 265.404, and 40 CFR 265.1102, and the following:

- (1) The estimate must equal the cost of closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. See 40 CFR 265.112(b).
- (2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of "parent corporation" in section 2(e) of this rule. The owner or operator may use costs for on-site disposal if the owner can demonstrate that on-site disposal capacity exists at all times over the life of the facility.
- (3) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, or nonhazardous waste if applicable under 40 CFR 265.113(d), facility structures or equipment, land, or other facility assets at the time of partial or final closure.
- (4) The owner or operator may not incorporate a zero (0) cost for hazardous waste that might have economic value.
- (b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within sixty

(60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 4 of this rule. For owners and operators using the financial test or guarantee, the closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before the submission of updated information to the commissioner as specified in section 9(c) of this rule. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than thirty (30) days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than thirty (30) days after the commissioner has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility:

(1) The latest closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted closure cost estimate.

(Solid Waste Management Board; 329 IAC 3.1-14-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 947; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1972; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3361; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-4 Financial assurance for closure; approach options

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.143

Sec. 4. An owner or operator of each facility shall establish financial assurance for closure of the facility. An owner or operator shall choose from the options as specified in sections 5 through 9 of this rule. *(Solid Waste Management Board; 329 IAC 3.1-14-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 948; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1973; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-5 Closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.143(a)

Sec. 5. (a) An owner or operator may satisfy the requirements of section 4 of this rule by establishing a closure trust fund that conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the commissioner. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 26(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement, for example, see section 26(a) of this rule. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(c) Payments into the trust fund must be made annually by the owner or operator over the twenty (20) years beginning with July 1, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments in the closure trust fund must be made as follows:

(1) The first payment must be made by July 1, 1982, except as provided in subsection (e). The first payment must be at least equal to the current closure cost estimate, except as provided in section 10 of this rule, divided by the number of years in the pay-in-period.

(2) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

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$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current closure cost estimate.

CV = The current value of the trust fund.

Y = The number of years remaining in the pay-in-period.

(d) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (c).

(e) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this section and sections 6 through 9 of this rule, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made as specified in subsection (c).

(f) After the pay-in-period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(1) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate; or

(2) obtain other financial assurance as specified in this section and sections 6 through 9 of this rule to cover the difference.

(g) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section and sections 6 through 9 of this rule for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (g) or (h), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(j) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than sixty (60) days after receiving bills for partial or final closure activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with section 12 of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide to the owner or operator a detailed written statement of reasons.

(k) The commissioner shall agree to termination of the trust when:

(1) the owner or operator substitutes alternate financial assurance as specified in section 4 of this rule, this section, and sections 6 through 11 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 4 of this rule, this section, and sections 6 through 11 of this rule in accordance with section 12 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 948; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1973; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-6 Surety bond guaranteeing payment into a closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; IC 23-1-16; 40 CFR 265.143(b)

Sec. 6. (a) An owner or operator may satisfy the requirements of this rule by:

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- (1) obtaining a surety bond that conforms to the requirements of this section; and
- (2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana and be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

- (b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in section 5 of this rule except the following:

- (1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
- (2) Until the standby trust fund is funded pursuant to the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule, the following are not required by sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule:
 - (A) Payments into the trust fund as specified in section 5 of this rule.
 - (B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current closure cost estimates.
 - (C) Annual valuations as required by the trust agreement.
 - (D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete one (1) of the following:

- (1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.
 - (2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.
 - (3) Provide alternate financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.
- (e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- (f) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate except as provided in section 10 of this rule.
- (g) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:
- (1) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or
 - (2) obtain other financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in section 5 of this rule, this section, and sections 7 through 9 of this rule. (*Solid Waste Management Board; 329 IAC 3.1-14-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 949; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1974; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436*)

329 IAC 3.1-14-7 Closure letter-of-credit option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.143(c)

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Sec. 7. (a) An owner or operator may satisfy the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and submitting the letter to the commissioner. The issuing institution must be an entity that has the authority to issue letters-of-credit and whose letters-of-credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter-of-credit must be identical to the wording specified in section 29 of this rule.

(c) An owner or operator who uses a letter-of-credit to satisfy the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in section 5 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(2) Unless the standby trust fund is funded pursuant to the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule, the following are not required by sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule:

(A) Payments into the trust fund as specified in section 5 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(1) The EPA identification number, name, and address of the facility.

(2) The amount of funds assured for closure of the facility by the letter-of-credit.

(e) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(f) The letter-of-credit must be issued in an amount at least equal to the current closure cost estimate except as provided in section 10 of this rule.

(g) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(h) Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the commissioner may draw on the letter-of-credit.

(i) If the owner or operator does not establish alternate financial assurance as specified in sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date, the commissioner shall draw on the letter-of-credit. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule and obtain written approval of such assurance from the commissioner.

(j) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule in accordance with section 12 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 950; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1975; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-8 Closure insurance option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.143(d)

Sec. 8. (a) An owner or operator may satisfy the requirements of sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule by obtaining closure insurance that conforms to the requirements of this section and submitting a certificate of such insurance to the commissioner. The owner or operator shall submit the certificate of insurance to the commissioner or establish other financial assurance as specified in sections 5 through 7 of this rule, this section, and section 9 of this rule. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(b) The wording of the certificate of insurance must be identical to the wording specified in section 30 of this rule.

(c) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate except as provided in section 10 of this rule. As used in this section, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(d) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy also must guarantee that once final closure begins, the insurer shall be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(e) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the commissioner shall instruct the insurer to make reimbursements in such amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursement of such amounts as the commissioner deems prudent until it is determined, in accordance with section 12 of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide to the owner or operator a detailed written statement of reasons.

(f) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subsection (j). Failure to pay the premium, without substitution of alternate financial assurance as specified in sections 5 through 7 of this rule, this section, and section 9 of this rule, constitutes a major violation of this rule warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(g) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

- (1) the commissioner deems the facility abandoned;
- (2) interim status is terminated or revoked;
- (3) closure is ordered by the commissioner, the Environmental Protection Agency (EPA), or court of competent jurisdiction;
- (4) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979; or
- (5) the premium due is paid.

(i) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, shall either:

- (1) cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or
- (2) obtain other financial assurance as specified in sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule to cover the increase.

Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(j) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

- (1) the owner or operator substitutes alternate financial assurance as specified in sections 5 through 7 of this rule, this section, and section 9 of this rule; or
- (2) the commissioner releases the owner or operator from the requirements of sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule in accordance with section 12 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 951; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1976; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-9 Financial test and guarantee for closure option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.143(e)

Sec. 9. (a) An owner or operator may satisfy the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule by demonstrating that the owner or operator passes a financial test as specified in this section. To pass this test, the owner or operator shall meet the criteria of either subdivision (1) or (2) as follows:

(1) The owner or operator shall have the following:

(A) Two (2) of the following three (3) ratios:

- (i) A ratio of total liabilities to net worth less than two (2.0).
- (ii) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
- (iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(B) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.

(C) Tangible net worth of at least ten million dollars (\$10,000,000).

(D) Assets located in the United States amounting to at least:

- (i) ninety percent (90%) of total assets; or
- (ii) six (6) times the sum of the current closure and post-closure cost estimates.

(2) The owner or operator shall have the following:

(A) A current rating for the most recent bond issuance of:

- (i) AAA, AA, A, or BBB as issued by Standard and Poor's; or
- (ii) Aaa, Aa, A, or Baa as issued by Moody's.

(B) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.

(C) Tangible net worth of at least ten million dollars (\$10,000,000).

(D) Assets located in the United States amounting to at least:

- (i) ninety percent (90%) of total assets; or
- (ii) six (6) times the sum of the current closure and post-closure cost estimates.

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(b) As used in subsection (a), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in section 31 of this rule of the letter from the owner's or operator's chief financial officer.

(c) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:

- (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 31 of this rule.
- (2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
- (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

(A) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.

(B) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(d) After the initial submission of items specified in subsection (c), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (c).

(e) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(f) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall provide alternate financial assurance as specified in sections 5 through 8 of this rule and this section within thirty (30) days after notification of such a finding.

(g) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subsection (c)(2).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule within thirty (30) days after notification of the disallowance.

(h) The owner or operator is no longer required to submit the items specified in subsection (c) when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 5 through 8 of this rule and this section; or

(2) the commissioner releases the owner or operator from the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule in accordance with section 12 of this rule.

(i) An owner or operator may meet the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (a) through (g) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 33 of this rule. The guarantee must accompany the items sent to the commissioner as specified in subsection (c). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(1) If the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor shall perform final closure in accordance with the closure plan and other interim status requirements or establish a trust fund as specified in section 5 of this rule in the name of the owner or operator.

(2) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or

operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(3) If the owner or operator fails to:

(A) provide alternate financial assurance as specified in sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule; and

(B) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(Solid Waste Management Board; 329 IAC 3.1-14-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 952; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1977; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-10 Use of multiple financial mechanisms option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.143(f)

Sec. 10. An owner or operator may satisfy the requirements of sections 4 through 9 of this rule and this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters-of-credit, and insurance. The mechanisms must be as specified in sections 5 through 8 of this rule, respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for closure of the facility. *(Solid Waste Management Board; 329 IAC 3.1-14-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-11 Use of a financial mechanism for multiple facilities option

Authority: IC 13-7-3; IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 265.143(g)

Sec. 11. An owner or operator may use a financial assurance mechanism specified in section 4 of this rule to meet the requirements of section 4 of this rule for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism. *(Solid Waste Management Board; 329 IAC 3.1-14-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-12 Release of owner or operator from the requirements for financial assurance for closure

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.143(h)

Sec. 12. Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by section 4 of this rule to maintain financial assurance for final closure of the facility, unless the commissioner has reason to believe that final closure has not been in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that closure has not been in accordance with the approved closure plan. *(Solid Waste Management Board; 329 IAC 3.1-14-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

IR 1535)

329 IAC 3.1-14-13 Cost estimate for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.144

Sec. 13. (a) The owner or operator of a hazardous waste disposal unit shall keep at the facility a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in 40 CFR 265.117 through 40 CFR 265.120, 40 CFR 265.228, 40 CFR 265.258, 40 CFR 265.280, 40 CFR 265.310, and the following:

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in section 2(e) of this rule.)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimates by the number of years of post-closure care required under 40 CFR 265.117.

(b) During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 14 of this rule. For owners or operators using the financial test or guarantee, the post-closure care cost estimate must be updated for inflation no later than thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the commissioner as specified in section 19(c) of this rule. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator shall revise the post-closure cost estimate no later than thirty (30) days after a revision to the post-closure plan that increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than thirty (30) days after the commissioner has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility:

(1) The latest post-closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted post-closure cost estimate.

(Solid Waste Management Board; 329 IAC 3.1-14-13; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-14 Financial assurance for post-closure care; approach options

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145

Sec. 14. By the effective date of this article, an owner or operator of each disposal facility with a hazardous waste disposal unit shall establish financial assurance for post-closure care of the disposal unit. The owner or operator shall choose from the options as specified in sections 15 through 19 of this rule. *(Solid Waste Management Board; 329 IAC 3.1-14-14; filed Jan 24, 1992, 2:00 p.m.: 15 IR 955; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1980; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-15 Post-closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(a)

Sec. 15. (a) An owner or operator may satisfy the requirements of section 14 of this rule by establishing a post-closure trust

fund that conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the commissioner. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 26(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement, for example, see section 26(b) through 26(c) of this rule. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(c) Payments into the trust fund must be made annually by the owner or operator over the twenty (20) years beginning with July 1, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the post-closure trust fund must be made as follows:

(1) The first payment must be made by July 1, 1982, except as provided in subsection (e). The first payment must be at least equal to the current post-closure cost estimate, except as provided in section 20 of this rule, divided by the number of years in the pay-in-period.

(2) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current post-closure cost estimate.

CV = The current value of the trust fund.

Y = The number of years remaining in the pay-in-period.

(d) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (c).

(e) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section and sections 16 through 19 of this rule, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made as specified in subsection (c).

(f) After the pay-in-period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(1) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate; or

(2) obtain other financial assurance as specified in this section and sections 16 through 19 of this rule to cover the difference.

(g) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section and sections 16 through 19 of this rule for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (g) or (h), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(j) During the period of post-closure care, the commissioner may approve a release of funds if the owner or operator demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care.

(k) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing if the commissioner determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(1) The commissioner shall agree to termination of the trust when:

(1) the owner or operator substitutes alternate financial assurance as specified in this section and sections 16 through 19 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-15; filed Jan 24, 1992, 2:00 p.m.: 15 IR 955; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1980; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-16 Surety bond guaranteeing payment into a post-closure trust fund option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.145(b)

Sec. 16. (a) An owner or operator may satisfy the requirements of section 14 of this rule by:

(1) obtaining a surety bond that conforms to the requirements of this section; and

(2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana and be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of section 14 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in section 15 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(2) Until the standby trust fund is funded pursuant to the requirements of sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule, the following are not required by sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule:

(A) Payments into the trust fund as specified in section 15 of this rule.

(B) Updating of Schedule A of the trust agreement in accordance with section 26 of this rule to reflect current post-closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(3) Provide alternate financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure

cost estimate following written approval by the commissioner.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in section 15 of this rule, this section, and sections 17 through 19 of this rule. (*Solid Waste Management Board; 329 IAC 3.1-14-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 956; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1981; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2437*)

329 IAC 3.1-14-17 Post-closure letter-of-credit option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.145(c)

Sec. 17. (a) An owner or operator may satisfy the requirements of section 14 of this rule by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and submitting the letter to the commissioner. The issuing institution must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter-of-credit must be identical to the wording specified in section 29 of this rule.

(c) An owner or operator who uses a letter-of-credit to satisfy the requirements of section 14 of this rule also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in section 15 of this rule except the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(2) Unless the standby trust fund is funded pursuant to the requirements of sections 14 through 16 of this rule, this section, and sections 18 through 21 of this rule, the following are not required by sections 14 through 16 of this rule, this section, and sections 18 through 21 of this rule:

(A) Payments into the trust fund as specified in section 15 of this rule.

(B) Updating of Schedule A of the trust agreement (see section 26 of this rule) to reflect current post-closure cost estimates.

(C) Annual valuations as required by the trust agreement.

(D) Notices of nonpayment as required by the trust agreement.

(d) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(1) The EPA identification number, name, and address of the facility.

(2) The amount of funds assured for post-closure care of the facility by the letter-of-credit.

(e) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(f) The letter-of-credit must be issued in an amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance as specified in sections 15 through 16 of this rule, this section, and sections 18 through 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(h) During the period of post-closure care, the commissioner may approve a decrease in the amount of the letter-of-credit if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.

(i) Following a final administrative determination under IC 13-30-3 or Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq. that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the commissioner may draw on the letter-of-credit.

(j) If the owner or operator does not establish alternate financial assurance as specified in sections 15 through 16 of this rule, this section, and sections 18 through 19 of this rule and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date, the commissioner shall draw on the letter-of-credit. The commissioner may delay the drawing if the issuing institution grants an extension of the term of credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in sections 15 through 16 of this rule, this section, and sections 18 through 19 of this rule and obtain written approval of such assurance from the commissioner.

(k) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 14 through 16 of this rule, this section, and sections 18 through 21 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-17; filed Jan 24, 1992, 2:00 p.m.: 15 IR 957; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1982; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-18 Post-closure insurance option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.145(d)

Sec. 18. (a) An owner or operator may satisfy the requirements of section 14 of this rule by obtaining post-closure insurance that conforms to the requirements of this section and submitting a certificate of such insurance to the commissioner. The owner or operator shall submit the certificate of insurance to the commissioner or establish other financial assurance as specified in sections 15 through 17 of this rule, this section, and section 19 of this rule. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(b) The wording of the certificate of insurance must be identical to the wording specified in section 30 of this rule.

(c) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule. As used in this section, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(d) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy also must guarantee that once post-closure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(e) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the insurer to make reimbursements in those amounts as the commissioner specifies in writing if the commissioner determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide a detailed written statement of reasons.

(f) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subsection (k). Failure to pay the premium, without substitution of alternate financial assurance as specified in sections 14 through 17 of this rule, this section, and sections 19 through 21 of this rule, constitutes

a major violation of this rule warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(g) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

- (1) the commissioner deems the facility abandoned;
- (2) the interim status is terminated or revoked;
- (3) closure is ordered by the commissioner, the Environmental Protection Agency (EPA), or court of competent jurisdiction;
- (4) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979; or
- (5) the premium due is paid.

(i) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

- (1) cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
- (2) obtain other financial assurance as specified in sections 15 through 17 of this rule, this section, and section 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(j) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for twenty-six (26) week Treasury securities.

(k) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

- (1) the owner or operator substitutes alternate financial assurance as specified in sections 15 through 17 of this rule, this section, and section 19 of this rule; or
- (2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-18; filed Jan 24, 1992, 2:00 p.m.: 15 IR 958; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1983; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-19 Financial test and guarantee for post-closure care option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.145(e)

Sec. 19. (a) An owner or operator may satisfy the requirements of sections 14 through 18 of this rule, this section, and sections 20 through 22 of this rule by demonstrating that the owner or operator passes a financial test as specified in this section. To pass this test, the owner or operator shall meet the criteria of either subdivision (1) or (2) as follows:

(1) The owner or operator shall have the following:

(A) Two (2) of the following three (3) ratios:

- (i) A ratio of total liabilities to net worth less than two (2.0).
- (ii) Ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

- (iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
- (B) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.
- (C) Tangible net worth of at least ten million dollars (\$10,000,000).
- (D) Assets located in the United States amounting to at least:
 - (i) ninety percent (90%) of the total assets; or
 - (ii) six (6) times the sum of the current closure and post-closure cost estimates.
- (2) The owner or operator shall have the following:
 - (A) A current rating for the most recent bond issuance of:
 - (i) AAA, AA, A, or BBB as issued by Standard and Poor's; or
 - (ii) Aaa, Aa, A, or Baa as issued by Moody's.
 - (B) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.
 - (C) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (D) Assets located in the United States amounting to at least:
 - (i) ninety percent (90%) of the total assets; or
 - (ii) six (6) times the sum of the current closure and post-closure cost estimates.
- (b) As used in subsection (a), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in the letter from the owner's or operator's chief financial officer in section 31 of this rule.
- (c) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:
 - (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 31 of this rule.
 - (2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
 - (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
 - (A) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.
 - (B) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.
- (d) After the initial submission of items specified in subsection (c), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (c).
- (e) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in sections 15 through 18 of this rule and this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.
- (f) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall provide alternate financial assurance as specified in sections 15 through 18 of this rule and this section within thirty (30) days after notification of such a finding.
- (g) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subsection (c)(2).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in sections 15 through 18 of this rule and this section within thirty (30) days after notification of the disallowance.
- (h) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(i) The owner or operator is no longer required to submit the items specified in subsection (c) when:

(1) the owner or operator substitutes alternate financial assurance as specified in sections 15 through 18 of this rule and this section; or

(2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(j) An owner or operator may meet the requirements of sections 14 through 18 of this rule, this section, and sections 20 through 21 of this rule by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (a) through (h) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 33 of this rule. The guarantee must accompany the items sent to the commissioner as specified in subsection (c). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(1) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other interim status requirements or establish a trust fund as specified in section 15 of this rule in the name of the owner or operator.

(2) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(3) If the owner or operator fails to:

(A) provide alternate financial assurance as specified in sections 15 through 18 of this rule and this section; and

(B) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(Solid Waste Management Board; 329 IAC 3.1-14-19; filed Jan 24, 1992, 2:00 p.m.: 15 IR 960; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1984; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-20 Use of multiple financial mechanisms option

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.145(f)

Sec. 20. An owner or operator may satisfy the requirements of section 14 of this rule by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters-of-credit, and insurance. The mechanisms must be as specified in sections 15 through 18 of this rule, respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for post-closure care of the facility. *(Solid Waste Management Board; 329 IAC 3.1-14-20; filed Jan 24, 1992, 2:00 p.m.: 15 IR 961; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-21 Use of a financial mechanism for multiple facilities option

Authority: IC 13-7-3; IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 265.145(g)

Sec. 21. An owner or operator may use a financial assurance mechanism specified in this rule to meet the requirements of section 14 of this rule for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure care assured

by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism. (*Solid Waste Management Board; 329 IAC 3.1-14-21; filed Jan 24, 1992, 2:00 p.m.: 15 IR 961; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-22 Release of owner or operator from the requirements for financial assurance for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.145(h)

Sec. 22. Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by sections 14 through 21 of this rule and this section to maintain financial assurance for post-closure care of that unit, unless the commissioner has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that post-closure care has not been in accordance with the approved post-closure plan. (*Solid Waste Management Board; 329 IAC 3.1-14-22; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-23 Use of a mechanism for financial assurance of both closure and post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.146

Sec. 23. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter-of-credit, insurance, financial test, or guarantee that meets the specifications for the mechanism in sections 4 through 12 and 14 through 22 of this rule. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and post-closure care. (*Solid Waste Management Board; 329 IAC 3.1-14-23; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-24 Liability requirements

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 265.147

Sec. 24. (a) After July 1, 1982, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operation of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars (\$1,000,000) per occurrence with an annual aggregate of at least two million dollars (\$2,000,000), exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of the following six (6) ways:

- (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as follows:
 - (A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 35 of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 36 of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy.
 - (B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.
- (2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as

specified in subsection (f) or by using the guarantee for liability coverage as specified in subsection (g).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (h).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (i).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (j).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify other assurance as excess coverage.

An owner or operator shall notify the commissioner in writing within thirty (30) days whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this subsection, a certification of valid claim for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under this subsection, or a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under this subsection.

(b) An owner or operator of a surface impoundment, landfill, or land treatment facility that is used to manage hazardous waste or a group of such facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operation of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars (\$3,000,000) per occurrence with an annual aggregate of at least six million dollars (\$6,000,000), exclusive of legal defense costs. An owner or operator who meets the requirements of this subsection may combine the required per occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per occurrence level and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least four million dollars (\$4,000,000) per occurrence and eight million dollars (\$8,000,000) annual aggregate. This liability coverage may be demonstrated in one (1) of the following six (6) ways:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as follows:

(A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 35 of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 36 of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (f) or by using the guarantee for liability coverage as specified in subsection (g).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (h).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (i).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (j).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance,

financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify other assurance as excess coverage.

An owner or operator shall notify the commissioner in writing within thirty (30) days whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this subsection, a certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under this subsection, or a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under this subsection.

(c) If an owner or operator demonstrates to the satisfaction of the commissioner that the levels of financial responsibility required by subsection (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an exemption from the commissioner. The request for an exemption must be submitted in writing to the commissioner. If granted, the exemption will take the form of an adjusted level of required liability coverage, with such level to be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The commissioner may require an owner or operator who requests an exemption to provide such technical and engineering information as is deemed necessary by the commissioner to determine a level of financial responsibility other than that required by subsection (a) or (b). The commissioner shall process an exemption request as if it was a permit modification request under 329 IAC 3.1-13-7 and subject to the procedures of 329 IAC 3.1-13-7. Notwithstanding any other provision, the commissioner may hold a public hearing whenever the commissioner finds, on the basis of requests for a public hearing, a significant degree of public interest in a decision to grant an exemption.

(d) If the commissioner determines that the levels of financial responsibility required by subsection (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the commissioner may adjust the level of financial responsibility required under subsection (a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not a surface impoundment, landfill, or land treatment facility, the commissioner may require that an owner or operator of the facility comply with subsection (b). An owner or operator shall furnish to the commissioner, within ninety (90) days, any information that the commissioner requests to determine whether cause exists for such adjustments of level or type of coverage. The commissioner shall process an adjustment of the level of required coverage as if it was a permit modification request under 329 IAC 3.1-13 subject to the procedures of 329 IAC 3.1-13. Notwithstanding any other provision, the commissioner may hold a public hearing whenever the commissioner finds, on the basis of requests for a public hearing, a significant degree of public interest in a decision to adjust the level or type of required coverage.

(e) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility, unless the commissioner has reason to believe that closure has not been in accordance with the approved closure plan.

(f) The requirements for the financial test for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes the financial test. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

- (i) Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test.
- (ii) Tangible net worth of at least ten million dollars (\$10,000,000).
- (iii) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or

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- (BB) six (6) times the amount of liability coverage to be demonstrated by this test.
- (B) The owner or operator shall have the following:
- (i) A current rating for the most recent bond issuance of:
 - (AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
 - (BB) Aaa, Aa, A, or Baa as issued by Moody's.
 - (ii) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (iii) Tangible net worth of at least six (6) times the amount of liability coverage to be demonstrated by this test.
 - (iv) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of his the total assets; or
 - (BB) six (6) times the amount of liability coverage to be demonstrated by this test.
- (2) As used in this subsection, "amount of liability coverage" refers to the annual aggregate amounts for which coverage is required under subsections (a) through (b).
- (3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:
- (A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 32 of this rule. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by sections 9 and 19 of this rule, and liability coverage, the owner or operator shall submit the letter specified in section 32 of this rule to cover both forms of financial responsibility. A separate letter as specified in section 31 of this rule is not required.
 - (B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
 - (C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
 - (i) The independent certified public accountant has compared the data that the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.
 - (ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.
- (4) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).
- (5) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall obtain insurance, a letter-of-credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the commissioner within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the test requirements.
- (6) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty (30) days after notification of disallowance.
- (g) The requirements for guarantee for liability coverage are as follows:
- (1) Subject to subdivision (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as a guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsection (f)(1) through (f)(6). The wording of the guarantee must be identical to the wording specified in section 34 of this rule. A certified copy of the guarantee must accompany the items sent to the commissioner as specified in subsection (f)(3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall satisfy the judgment or pay the amount agreed to in settlement of claims up to the limits of coverage.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. This guarantee may not be terminated unless and until the commissioner approves in writing alternate liability coverage complying with 329 IAC 3.1-15-8 or this section.

(2) In the case of the corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the guarantor is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a guarantee executed as described in this section and section 34 of this rule is a legally valid and enforceable obligation in that state.

(3) In the case of the corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the non-U.S. corporation has identified a registered agent for service of process in Indiana and in the state in which it has its principal place of business; and

(B) the attorneys general or insurance commissioners of Indiana and the state in which the guarantor corporation has its principal place of business have submitted a written statement to the commissioner that a guarantee executed as described in this section and section 34 of this rule is a legally valid and enforceable obligation in that state.

(h) The requirements for letter-of-credit for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and by submitting a copy of the letter-of-credit to the commissioner.

(2) The financial institution issuing the letter-of-credit must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(3) The wording of the letter-of-credit must be identical to the wording specified in section 37 of this rule.

(4) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter-of-credit, all amounts paid pursuant to a draft by the trustee of the standby trust must be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The wording of the standby trust fund must be identical to the wording specified in section 40 of this rule.

(i) The requirements for surety bond for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this section and by submitting a copy of the bond to the commissioner.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the current Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in section 38 of this rule.

(4) A surety bond may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the surety is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a surety bond executed as described in this subsection and section 38 of this rule is a legally valid and enforceable obligation in that state.

(j) The requirements for trust fund for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the commissioner.

(2) The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the

amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund or within one hundred twenty (120) days of the reduction, whichever is sooner, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of the liability coverage to be provided or obtain other financial assurance as specified in this section to cover the difference. As used in this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden, nonsudden, or sudden and nonsudden occurrences required to be provided by the owner or operator by this subsection, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in section 39 of this rule.

(Solid Waste Management Board; 329 IAC 3.1-14-24; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1987; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-25 Incapacity of owners, operators, guarantors, or financial institutions

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 265.148

Sec. 25. (a) An owner or operator shall notify the commissioner by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a guarantee, as specified in sections 9 and 19 of this rule, shall make such a notification if the guarantor is named as debtor as required under the terms of the guarantee in section 33 of this rule.

(b) An owner or operator, who fulfills the requirements of sections 4 through 12 of this rule, sections 14 through 22 of this rule, or sections 23 through 24 of this rule by obtaining a trust fund, surety bond, letter-of-credit, or insurance policy, shall be deemed to be without the required financial assurance or liability coverage in the event of:

(1) bankruptcy of the trustee or issuing institution; or

(2) suspension or revocation of:

(A) the authority of the trustee institution to act as trustee; or

(B) the institution issuing the surety bond, letter-of-credit, or insurance policy to issue such instruments.

The owner or operator shall establish other financial assurance or liability coverage within sixty (60) days after such an event. *(Solid Waste Management Board; 329 IAC 3.1-14-25; filed Jan 24, 1992, 2:00 p.m.: 15 IR 965; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1991; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-14-26 Wording of instrument; trust agreement

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(a)

Sec. 26. (a) A trust agreement for a trust fund, as specified in section 5 or 15 of this rule, 329 IAC 3.1-15-4(b), or 329 IAC 3.1-15-6(b) (see 329 IAC 3.1-15-10(a)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management, (IDEM), an agency of the State of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

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(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by the Agreement.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the IDEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the IDEM.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the IDEM commissioner shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IDEM commissioner from the Fund for closure and post-closure expenditures in such amounts as the IDEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IDEM commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

(a) securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer

form or in book entry, or to combine certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the IDEM commissioner a statement confirming the value of the trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the IDEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee shall be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice of the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the IDEM, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IDEM commissioner, by certified mail within ten (10) days following the expiration of the thirty (30) day period after the anniversary of the establishment of the trust, if no payment is received from the Grantor during that period. After the pay-in-period is completed, the Trustee shall not be required to see a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section

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16, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in the defense of the Trustee in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Indiana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-26 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgement that must accompany the trust agreement for a trust fund as specified in section 5 or 15 of this rule and 329 IAC 3.1-15-4(b) or 329 IAC 3.1-15-6(b):

Form of certification of acknowledgement.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(c) The following is an example of the Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement.):

Form of Indiana certification of acknowledgement.

ACKNOWLEDGEMENT

State of _____

County of _____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199__.

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State of: _____

County of residence: _____

Notary Public

Commission Expires: _____

(Solid Waste Management Board; 329 IAC 3.1-14-26; filed Jan 24, 1992, 2:00 p.m.: 15 IR 965; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1992; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-27 Wording of instrument; surety bonds

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(b)

Sec. 27. A surety bond guaranteeing payment into a trust fund, as specified in section 6 or 16 of this rule, 329 IAC 3.1-15-4(c), or 329 IAC 3.1-15-6(c) (see 329 IAC 3.1-15-10(b)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

EPA identification number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

We, the Principal and Surety(ies) hereto are firmly bound to the Indiana Department of Environmental Management (hereinafter IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71 and 329 IAC 3.1, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the IDEM or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, as applicable, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the IDEM commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until

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such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-27 as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address] _____
State of incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s) and other information in the same manner as for Surety above.]
Bond premium: \$ _____

(Note: The corporate seal is not required by Indiana law.)

(Solid Waste Management Board; 329 IAC 3.1-14-27; filed Jan 24, 1992, 2:00 p.m.: 15 IR 969; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1995; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-28 Wording of instrument; performance bonds

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(c)

Sec. 28. A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 329 IAC 3.1-15-4(d) or 329 IAC 3.1-15-6(d) (see 329 IAC 3.1-15-10(c)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond
Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]: _____
EPA identification number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: _____

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Surety's bond number: _____

We, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Management of the State of Indiana (hereinafter IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure care plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in 329 IAC 3.1-15, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the closure requirements of 329 IAC 3.1-9, for a facility for which this bond guarantees performance of closure, Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the post-closure requirements of 329 IAC 3.1-9 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has failed to provide alternate financial assurance as specified in 329 IAC 3.1-15, and obtain written approval of such assurance from the IDEM commissioner during the ninety (90) days following receipt by both the Principal and the IDEM commissioner of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

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Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-28 as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address] _____

State of incorporation: _____

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)] _____

[Corporate seal]:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$ _____

(Note: The corporate seal is not required by Indiana law.)

(Solid Waste Management Board; 329 IAC 3.1-14-28; filed Jan 24, 1992, 2:00 p.m.: 15 IR 970; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1996; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-29 Wording of instrument; letter-of-credit

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(d)

Sec. 29. A letter-of-credit, as specified in section 7 or 17 of this rule, 329 IAC 3.1-15-4(e), or 329 IAC 3.1-15-6(e) (see 329 IAC 3.1-15-10(d)), must be worded as follows except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Irrevocable Standby Letter-of-Credit
Commissioner

Indiana Department of Environmental Management

Dear Sir or Madam: We hereby establish our irrevocable standby letter-of-credit no. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$ _____, available upon presentation of:

- (1) your sight draft, bearing reference to this letter-of-credit no. _____; and
(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the environmental management laws as defined at IC 13-11-2-71 as amended."

This letter-of-credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter-of-credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter-of-credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or

operator's name] in accordance with your instructions.

We certify that the wording of this letter-of-credit is identical to the wording specified in 329 IAC 3.1-14-29 as such rule was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "Article 5 of the Uniform Commercial Code as adopted in IC 26-1-5.1-101 through IC 26-1-5.1-117" or "the current edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce"]. (*Solid Waste Management Board; 329 IAC 3.1-14-29; filed Jan 24, 1992, 2:00 p.m.: 15 IR 972; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1998; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-30 Wording of instrument; certificate of insurance

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(e)

Sec. 30. A certificate of insurance, as specified in section 8 or 18 of this rule, 329 IAC 3.1-15-4(f), or 329 IAC 3.1-15-6(f) (see 329 IAC 3.1-15-10(e)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Closure or Post-Closure Care

Name and Address of Insurer (herein called the "Insurer"): _____

Name and Address of Insured (herein called the "Insured"): _____

Facilities Covered: [List for each facility: the EPA identification number, name, address, and the amount of insurance for closure and/or the amount for post-closure. (These amounts for all facilities covered must total the face amount shown below.)]

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 329 IAC 3.1-14-8, 329 IAC 3.1-14-18, 329 IAC 3.1-15-4(f), or 329 IAC 3.1-15-6(f) (see 329 IAC 3.1-15-10(e)) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the Insurer agrees to furnish to the IDEM commissioner a duplicate original of the policy listed above including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 329 IAC 3.1-14-30 as such rule was constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

(*Solid Waste Management Board; 329 IAC 3.1-14-30; filed Jan 24, 1992, 2:00 p.m.: 15 IR 973; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1998; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-31 Wording of instrument; chief financial officer letter for closure, post-closure, or closure and post-closure

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(f)

Sec. 31. A letter from the chief financial officer, as specified in section 9 or 19 of this rule, 329 IAC 3.1-15-4(g), or 329 IAC 3.1-15-6(g) (see 329 IAC 3.1-15-10(f)), must be worded as follows except that instructions in brackets are to be replaced with the

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relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to commissioner of the Indiana Department of Environmental Management]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.

[Complete the following four (4) paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

- 1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:
2. This firm guarantees, through the guarantee specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:
4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care is not demonstrated either to the Environmental Protection Agency (EPA) or a state through the financial test or any other financial assurance mechanism specified in 40 CFR 264 Subpart H and 40 CFR 265 Subpart H, or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-4(g)(1)(A), 329 IAC 3.1-15-6(g)(1)(A), 329 IAC 3.1-14-9(a)(1), or 329 IAC 3.1-14-19(a)(1) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-4(g)(1)(B), 329 IAC 3.1-15-6(g)(1)(B), 329 IAC 3.1-14-9(a)(2), or 329 IAC 3.1-14-19(a)(2) are used.]

Alternative I

- 1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above].
*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4].
*3. Tangible net worth.
*4. Net worth.
*5. Current assets.
*6. Current liabilities.
7. Net working capital [line 5 minus line 6].
*8. The sum of net income plus depreciation, depletion, and amortization.
*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).

YES NO

- 10. Is line 3 at least \$10 million?
11. Is line 3 at least 6 times line 1?
12. Is line 7 at least 6 times line 1?

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- *13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.
14. Is line 9 at least 6 times line 1?
15. Is line 2 divided by line 4 less than 2.0?
16. Is line 8 divided by line 2 greater than 0.1?
17. Is line 5 divided by line 6 greater than 1.5?

Alternative II

- 1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]. \$
2. Current bond rating of most recent issuance of this firm and name of rating service.
3. Date of issuance of bond.
4. Date of maturity of bond.
*5. Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.). \$

YES NO

- 7. Is line 5 at least \$10 million?
8. Is line 5 at least 6 times line 1?
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.
10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3.1-14-31 as such rule was constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(Solid Waste Management Board; 329 IAC 3.1-14-31; filed Jan 24, 1992, 2:00 p.m.: 15 IR 973; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1999; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-32 Wording of instrument; chief financial officer letter for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(g)

Sec. 32. A letter from the chief financial officer, as specified in section 24 of this rule or 329 IAC 3.1-15-8(e) (see 329 IAC 3.1-15-10(g)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure or post-closure care).

[Address to commissioner of the Indiana Department of Environmental Management, State of Indiana]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.

[Complete the following paragraphs regarding facilities and liability coverage. For each facility, include its EPA identification number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden", "nonsudden", or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.

The firm identified above guarantees, through the guarantee specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: . The firm identified above is [insert either or both, as applicable: "the direct

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or higher tier parent corporation of the owner or operator” or “owned by the same parent corporation as the parent corporation of the owner or operator and receiving the following value in consideration of this guarantee _____.”].

[If you are using the financial test to demonstrate coverage of both liability and closure and/or post-closure care, fill in the following four (4) paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write “None” in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.
2. The firm identified above guarantees, through the guarantee specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.
4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care is not demonstrated either to the Environmental Protection Agency (EPA) or a state through the financial test or any other financial assurance mechanism specified in 40 CFR 264 Subpart H and 40 CFR 265 Subpart H, or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage ONLY for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-8(e)(1)(A) or 329 IAC 3.1-14-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-8(e)(1)(B) or 329 IAC 3.1-14-24(f)(1)(B) are used.]

Alternative I

- | | | |
|-----|---|----------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated. | \$ _____ |
| *2. | Current assets. | \$ _____ |
| *3. | Current liabilities. | \$ _____ |
| 4. | Net working capital (line 2 minus line 3). | \$ _____ |
| *5. | Tangible net worth. | \$ _____ |
| *6. | If less than 90% of assets are located in the U.S., give total U.S. assets. | \$ _____ |

YES NO

- | | | |
|------|---|--|
| 7. | Is line 5 at least \$10 million? | |
| 8. | Is line 4 at least 6 times line 1? | |
| 9. | Is line 5 at least 6 times line 1? | |
| *10. | Are at least 90% of assets located in the U.S.? If not, complete line 11. | |
| 11. | Is line 6 at least 6 times line 1? | |

Alternative II

- | | | |
|-----|---|----------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated. | \$ _____ |
| 2. | Current bond rating of most recent issuance and name of rating service. | |
| 3. | Date of issuance of bond. | |
| 4. | Date of maturity of bond. | |
| *5. | Tangible net worth. | \$ _____ |

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*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.). \$ _____

YES NO

- 7. Is line 5 at least \$10 million?
- 8. Is line 5 at least 6 times line 1?
- *9. Are at least 90% of assets located in the U.S.? If not, complete line 10.
- 10. Is line 6 at least 6 times line 1?

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage AND closure and/or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-4(g)(1)(A) or 329 IAC 3.1-15-6(g)(1)(A) and 329 IAC 3.1-15-8(e)(1)(A) are used or if 329 IAC 3.1-14-9(a)(1) or 329 IAC 3.1-14-19(a)(1) and 329 IAC 3.1-14-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-4(g)(1)(B) or 329 IAC 3.1-15-6(g)(1)(B) and 329 IAC 3.1-15-8(e)(1)(B) are used or if 329 IAC 3.1-14-9(a)(2) or 329 IAC 3.1-14-19(a)(2) and 329 IAC 3.1-14-24(f)(1)(B) are used.]

Alternative I

- 1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above). \$ _____
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$ _____
- 3. Sum of lines 1 and 2. \$ _____
- *4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6). \$ _____
- *5. Tangible net worth. \$ _____
- *6. Net worth. \$ _____
- *7. Current assets. \$ _____
- *8. Current liabilities. \$ _____
- 9. Net working capital (line 7 minus line 8). \$ _____
- *10. The sum of net income plus depreciation, depletion, and amortization. \$ _____
- *11. Total assets in U.S. (required only if less than 90% of assets located in the U.S.). \$ _____

YES NO

- 12. Is line 5 at least \$10 million?
- 13. Is line 5 at least 6 times line 3?
- 14. Is line 9 at least 6 times line 3?
- *15. Are at least 90% of assets located in the U.S.? If not, complete line 16.
- 16. Is line 11 at least 6 times line 3?
- 17. Is line 4 divided by line 6 less than 2.0?
- 18. Is line 10 divided by line 4 greater than 0.1?
- 19. Is line 7 divided by line 8 greater than 1.5?

Alternative II

- 1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above). \$ _____
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$ _____
- 3. Sum of lines 1 and 2. \$ _____
- 4. Current bond rating of most recent issuance and name of rating service.
- 5. Date of issuance of bond.
- 6. Date of maturity of bond.
- *7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements, you may add that portion to this line). \$ _____
- *8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.). \$ _____

YES NO

- 9. Is line 7 at least \$10 million?

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10. Is line 7 at least 6 times line 3?
- *11. Are at least 90% of assets located in the U.S.? If not, complete line 12.
12. Is line 8 at least 6 times line 3?

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3.1-14-32 as such rule was constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(Solid Waste Management Board; 329 IAC 3.1-14-32; filed Jan 24, 1992, 2:00 p.m.: 15 IR 975; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2000; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-33 Wording of instrument; guarantee for closure or post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151(h)(1)

Sec. 33. A guarantee, as specified in section 9 or 19 of this rule, 329 IAC 3.1-15-4(g), or 329 IAC 3.1-15-6(g) (see 329 IAC 3.1-15-10(h)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert state's name], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one (1) of the following: "our subsidiary" or "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"] to the Department of Environmental Management of the State of Indiana (IDEM).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 3.1-14-9 and 329 IAC 3.1-14-19 or 329 IAC 3.1-15-4(g) and 329 IAC 3.1-15-6(g).
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address. Indicate for each whether guarantee is for closure, post-closure, or both.]
3. "Closure plan" and "post-closure plan" as used below refer to the plans maintained as required by 329 IAC 3.1-14 and 329 IAC 3.1-15 for the closure and post-closure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to IDEM that in the event that [owner or operator] fails to perform [insert "closure", "post-closure care", or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the IDEM commissioner and to [owner or operator] that the guarantor intends to provide alternate financial assurance as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the IDEM commissioner by certified mail, of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
7. Guarantor agrees that within thirty (30) days after being notified by the IDEM commissioner of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure or post-closure care, the guarantor shall establish alternate financial assurance as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or

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modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 329 IAC 3.1-10 or 329 IAC 3.1-9.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 329 IAC 3.1-14 and 329 IAC 3.1-15 for the above-listed facilities except as provided in paragraph 10 of this guarantee.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the IDEM commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the IDEM commissioner approves, alternate closure, post-closure care, or closure and post-closure care coverage complying with 329 IAC 3.1-14 or 329 IAC 3.1-15, or both.

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, and obtain written approval of such assurance from the IDEM commissioner within ninety (90) days after a notice of cancellation by the guarantor is received by the IDEM commissioner from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the IDEM commissioner or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3.1-14-33 as such rule was constituted on the date first above written.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(Solid Waste Management Board; 329 IAC 3.1-14-33; filed Jan 24, 1992, 2:00 p.m.: 15 IR 978; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2002; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-34 Wording of instrument; guarantee for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(h)(2)

Sec. 34. (a) The guarantee, as specified in section 24(g) of this rule or 329 IAC 3.1-15-8(f) (see 329 IAC 3.1-15-10(h)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted: Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States, insert, "the State of _____" and insert the name of the state, or, if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one (1) of the following: "our subsidiary", or "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 3.1-15-8(f) and 329 IAC 3.1-14-24(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address, and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each state.] This guarantee satisfies third party liability requirements for hazardous waste under IC 13-11-2-71 for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount [insert dollar amount] for each

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occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s), up to the limits of coverage identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the commissioner and to [owner or operator] that the guarantor intends to provide alternate liability coverage as specified in 329 IAC 3.1-15-8 and 329 IAC 3.1-14-24, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

5. The guarantor agrees to notify the commissioner by certified mail of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

6. Guarantor agrees that within thirty (30) days after being notified by the commissioner of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in 329 IAC 3.1-15-8 or 329 IAC 3.1-14-24, in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 329 IAC 3.1-15-8 and 329 IAC 3.1-14-24, provided that such modification shall become effective only if the commissioner does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 329 IAC 3.1-15-8 and 329 IAC 3.1-14-24 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the commissioner approves alternate liability coverage complying with 329 IAC 3.1-15-8 and/or 329 IAC 3.1-14-24.

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

12. Guarantor shall satisfy a third party liability claim only on receipt of one (1) of the following documents, either (a) or (b):

(a) Certification from the principal and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's hazardous waste treatment, storage, or disposal facility] must be paid in the amount of \$ _____.

[Signature]

Principal _____

(Notary) Date _____

[Signature or signatures]

Claimant or claimants _____

(Notary) Date _____

(b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

13. In the event of the combination of this guarantee with another mechanism to meet liability requirements, this guarantee

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will be considered [insert "primary" or "excess"] coverage.

(b) Such obligation does not apply to any of the following:

(1) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(2) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(3) Bodily injury to:

(A) an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(B) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of, employment by [insert owner or operator].

(4) Subdivision (3) applies:

(A) whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in subdivision (3).

(5) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(6) Property damage to any of the following:

(A) Any property owned, rented, or occupied by [insert owner or operator].

(B) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises.

(C) Property loaned to [insert owner or operator].

(D) Personal property in the care, custody, or control of [insert owner or operator].

(E) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3.1-14-34 as such rule was constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(Solid Waste Management Board; 329 IAC 3.1-14-34; filed Jan 24, 1992, 2:00 p.m.: 15 IR 978; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2003; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-35 Wording of instrument; hazardous waste facility liability endorsement form

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(i)

Sec. 35. A hazardous waste facility liability endorsement, as required in section 24 of this rule or 329 IAC 3.1-15-8 (see 329 IAC 3.1-15-10(i)), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insurer's obligation to demonstrate financial responsibility under 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences". If coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities

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are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrence is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with this paragraph are hereby amended to conform with the following:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to the amount of any deductible for which coverage is demonstrated as specified in 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8.

(c) Whenever requested by the commissioner of the Indiana Department of Environmental Management (IDEM), the Insurer agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, a parent corporation providing insurance coverage for its subsidiary, or a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the IDEM commissioner.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the IDEM commissioner.

Attached to and forming part of policy number _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 19____. The effective date of said policy is _____ day of _____, 19_____.

I hereby certify that the wording of this endorsement is identical to the wording specified in 329 IAC 3.1-14-35 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of representative]

(Solid Waste Management Board; 329 IAC 3.1-14-35; filed Jan 24, 1992, 2:00 p.m.: 15 IR 979; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2005; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-36 Wording of instrument; hazardous waste facility certificate of liability insurance

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(j)

Sec. 36. A certificate of liability insurance, as required in section 24 of this rule or 329 IAC 3.1-15-8 (see 329 IAC 3.1-15-10(j)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance

1. [Name of Insurer], [the “Insurer”], of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of Insured], [the “Insured”], of [address of Insured] in connection with the Insured's obligation to demonstrate financial responsibility under 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert “sudden accidental occurrences”, “nonsudden accidental occurrences”, or “sudden and nonsudden accidental occurrences”]. If coverage is for multiple facilities and the coverage is different for different facilities, indicate which facility(ies) are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

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(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to the amount of any deductible for which coverage is demonstrated as specified in 329 IAC 3.1-14-24(f) or 329 IAC 3.1-15-8(e).

(c) Whenever requested by the commissioner of the Department of Environmental Management of the State of Indiana (IDEM), the Insurer agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the Insured, a parent corporation providing insurance coverage for its subsidiary, or a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the IDEM commissioner.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the IDEM commissioner.

I hereby certify that the wording of this instrument is identical to the wording specified in 329 IAC 3.1-14-36 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized representative of [name of Insurer]

[Address of representative]

(Solid Waste Management Board; 329 IAC 3.1-14-36; filed Jan 24, 1992, 2:00 p.m.: 15 IR 980; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2006; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-37 Wording of instrument; letter-of-credit for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(k)

Sec. 37. A letter-of-credit, as required in section 24(h) of this rule or 329 IAC 3.1-15-8(g) (see 329 IAC 3.1-15-10(k)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter-of-Credit

Name and Address of Issuing Institution _____

Commissioner

Indiana Department of Environmental Management

Dear Sir or Madam: We hereby establish our irrevocable standby letter-of-credit no. _____ in the favor of [“any and all third party liability claimants” or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third party liability awards or settlements up to [in words] U.S. dollars \$ _____ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$ _____ for sudden accidental occurrences, for third party liability awards or settlements, or for sudden accidental occurrences and third party liability awards or settlements up to the amount of [in words] U.S. dollars \$ _____ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$ _____ for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter-of-credit no. _____ and [insert either of the following, 1. or 2., if the letter-of-credit is being used without a standby trust fund]:

1. A signed certification reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [“sudden” or “nonsudden”] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars \$ _____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

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(b) Any obligation of [insert principal] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

(c) Bodily injury to:

- (i) an employee of [insert principal] arising from and in the course of employment by [insert principal]; or
- (ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies whether [insert principal] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

- (i) Any property owned, rented, or occupied by [insert principal].
- (ii) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises.
- (iii) Property loaned to [insert principal].
- (iv) Personal property in the care, custody, or control of [insert principal].
- (v) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations if the property damage arises out of these operations.

[Signature]

Grantor _____

[Signature or signatures]

Claimant or Claimants _____

2. A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter-of-credit is effective as of [date] and will expire on [date at least one (1) year later], but such expiration date must be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date unless, at least one hundred twenty (120) days before the current expiration date, we notify you, the IDEM commissioner, and [owner or operator] by certified mail that we have decided not to extend this letter-of-credit beyond the current expiration date.

Whenever this letter-of-credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

Insert the following language if a standby trust fund is not being used:

“In the event that this letter-of-credit is used in combination with another mechanism for liability coverage, this letter-of-credit must be considered [insert “primary” or “excess” coverage].”

We certify that the wording of this letter-of-credit is identical to the wording specified in 329 IAC 3.1-14-37 as such rule was constituted on the date shown immediately below.

[Signature and title of official or officials of issuing institution]

[Date]

This credit is subject to [insert “the current edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce” or “the Uniform Commercial Code”]. (*Solid Waste Management Board; 329 IAC 3.1-14-37; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2006; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-14-38 Wording of instrument; surety bond for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(l)

Sec. 38. A surety bond, as required in section 24(i) of this rule or 329 IAC 3.1-15-8(h) (see 329 IAC 3.1-15-10(l)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [insert number]

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Parties: [insert name and address of owner or operator], Principal, incorporated in [insert state of incorporation] of [insert city and state of Principal's place of business] and [insert name and address of Surety Company or Companies], Surety Company or Companies, of [insert Surety's or Sureties' place of business].

EPA identification number, name, and address for each facility guaranteed by this bond: _____

For Sudden Accidental Occurrences:

Penal Sum Per Occurrence: [insert amount]

Annual Aggregate: [insert amount]

For Nonsudden Accidental Occurrences:

Penal Sum Per Occurrence: [insert amount]

Annual Aggregate: [insert amount]

Purpose: This is an agreement between the Surety or Sureties and the Principal under which the Surety or Sureties, its successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury, property damage, or bodily injury and property damage to third parties caused by ["sudden", "nonsudden", or "sudden and nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein and subject to the governing provisions and the following conditions:

Governing provisions as follows:

1. Section 3004 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq.
2. 329 IAC 3.1-14-24, 329 IAC 3.1-15-8, or 329 IAC 3.1-14-24 and 329 IAC 3.1-15-8.

Conditions as follows:

1. The Principal is subject to the applicable governing provisions that require the Principal to have and to maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden", "nonsudden", or "sudden and nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

- (a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert Principal] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.
- (c) Bodily injury to:
 - (i) an employee of [insert Principal] arising from and in the course of employment by [insert Principal]; or
 - (ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal].

This exclusion applies whether [insert Principal] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

- (i) Any property owned, rented, or occupied by [insert Principal].
- (ii) Premises that are sold, given away, or abandoned by [insert Principal] if the property damage arises out of any part of those premises.
- (iii) Property loaned to [insert Principal].
- (iv) Personal property in the care, custody, or control of [insert Principal].
- (v) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations if the property damage arises out of these operations.

2. This bond assures that the Principal will satisfy valid third party liability claims as described in condition 1.

3. If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety or Sureties becomes liable on this bond obligation.

4. The Surety or Sureties shall satisfy a third party liability claim only upon the receipt of one (1) of the following documents,

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either (a) or (b):

(a) Certification from the Principal and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a ["sudden" or "nonsudden"] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars \$_____.

[Signature]

Principal _____

[Notary]

Date _____

[Signature or signatures]

Claimant or claimants _____

[Notary]

Date _____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

- 5. In the event of the combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.
6. The liability of the Surety or Sureties must not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments will amount in the aggregate to the penal sum of the bond. In no event must the obligation of the Surety or Sureties hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety or Sureties furnishes notice to the commissioner of the Indiana Department of Environmental Management (IDEM) forthwith of all claims filed and payments made by the Surety or Sureties under this bond.
7. The Surety or Sureties may cancel the bond by sending notice of cancellation by certified mail to the IDEM commissioner provided, however, that cancellation must not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal and the IDEM commissioner, as evidenced by the return receipt.
8. The Principal may terminate this bond by sending written notice to the Surety or Sureties and to the IDEM commissioner.
9. The Surety or Sureties hereby waives notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment must in any way alleviate its obligation on this bond.
10. This bond is effective from [insert date], 12:01 a.m., standard time, at the address of the Principal as stated herein and must continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety or Sureties have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety or Sureties and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-38 as such rule was constituted on the date this bond was executed.

PRINCIPAL

[Signature or signatures]

[Name or names]

[Title or titles]

[Corporate seal]

CORPORATE SURETY OR SURETIES

[Name and address]

State of incorporation: _____

Liability limit: \$ _____

[Signature or signatures]

[Name or names and title or titles]

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[Corporate seal]

[For every co-surety, provide signature or signatures and other information in the same manner as for Surety above.]

Bond premium: \$ _____

(Note: The corporate seal is not required by Indiana law)

(Solid Waste Management Board; 329 IAC 3.1-14-38; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2008; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-39 Wording of instrument; trust agreement for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(m)

Sec. 39. (a) A trust agreement, as required in section 24(j) of this rule or 329 IAC 3.1-15-8(i) (see 329 IAC 3.1-15-10(m)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management (IDEM), an agency of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden, nonsudden, or sudden and nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, and address of the facility or facilities and the amount of liability coverage, or portions thereof, if more than one (1) instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of any and all third parties injured or damaged by [sudden, nonsudden, or sudden and nonsudden] accidental occurrences arising from the operation of the facility or facilities covered by this guarantee in the amounts of _____ [up to one million dollars (\$1,000,000)] per occurrence and _____ [up to two million dollars (\$2,000,000)] annual aggregate for sudden accidental occurrences and _____ [up to three million dollars (\$3,000,000)] per occurrence and _____ [up to six million dollars (\$6,000,000)] annual aggregate for nonsudden occurrences except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

(c) Bodily injury to:

(i) an employee of [insert Grantor] arising from and in the course of employment by [insert Grantor]; or

(ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies whether [insert Grantor] may be liable as an employer or in any other capacity and applies to any

obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to any of the following:

(i) Any property owned, rented, or occupied by [insert Grantor].

(ii) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises.

(iii) Property loaned to [insert Grantor].

(iv) Personal property in the care, custody, or control of [insert Grantor].

(v) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund will be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund must be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by IDEM.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one (1) of the following documents, either (a) or (b):

(a) Certification from the Grantor and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility must be paid in the amount of [in words] U.S. dollars \$_____.

[Signature]

Grantor _____

[Signature or signatures]

Claimant or claimants _____

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund must consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

(a) securities or other obligations of the Grantor or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), must not be acquired or held unless they are securities or other obligations of the federal or state government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without

liability for the payment of interest therein.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) to transfer, from time to time, any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one that may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee must at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund must be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee must be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the IDEM commissioner a statement confirming the value of the trust. Any securities in the Fund must be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the IDEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement must not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section must be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee must be in writing,

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signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee must be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or IDEM or both except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount or amounts thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund or within one hundred twenty (120) days of the payout, whichever is sooner, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor neither makes payments to the Trustee nor provides the Trustee with such proof, the Trustee shall, within ten (10) working days after the anniversary date of the establishment of the Fund, provide a written notice of nonpayment to the commissioner.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust must be irrevocable and must continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, must be delivered to the Grantor.

The commissioner will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement must be administered, construed, and enforced according to the laws of Indiana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement must not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-39 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgement that must accompany the trust agreement for a trust fund as specified in 329 IAC 3.1-14-24(j) or 329 IAC 3.1-15-8(i):

Form of certification of acknowledgement.

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State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(c) The following is an example of the Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement.):

Form of Indiana certification of acknowledgement.

ACKNOWLEDGEMENT

State of _____
County of _____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199__.

State of: _____

County of residence: _____

Notary Public

Commission Expires: _____

(Solid Waste Management Board; 329 IAC 3.1-14-39; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2009; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-14-40 Wording of instrument; standby trust agreement for liability coverage

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.151(n)

Sec. 40. (a) A standby trust agreement, as required in section 24(h) of this rule or 329 IAC 3.1-15-8(g) (see 329 IAC 3.1-15-10(n)), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management (IDEM), an agency of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden, nonsudden, or sudden and nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter-of-credit may be deposited to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

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Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, and address of the facility or facilities and the amount of liability coverage, or portions thereof, if more than one (1) instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, the "Fund", for the benefit of any and all third parties injured or damaged by [sudden, nonsudden, or sudden and nonsudden] accidental occurrences arising from the operation of the facility or facilities covered by this guarantee in the amounts of _____ [up to one million dollars (\$1,000,000)] per occurrence and _____ [up to two million dollars (\$2,000,000)] annual aggregate for sudden accidental occurrences and _____ [up to three million dollars (\$3,000,000)] per occurrence and _____ [up to six million dollars (\$6,000,000)] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

- (a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert Grantor] under workers' compensation, disability benefits, unemployment compensation law, or any similar law.
- (c) Bodily injury to:
 - (i) an employee of [insert Grantor] arising from and in the course of employment by [insert Grantor]; or
 - (ii) the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies whether [insert Grantor] may be liable as an employer or in any other capacity and applies to any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in this paragraph.

- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
- (e) Property damage to any of the following:
 - (i) Any property owned, rented, or occupied by [insert Grantor].
 - (ii) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises.
 - (iii) Property loaned to [insert Grantor].
 - (iv) Personal property in the care, custody, or control of [insert Grantor].
 - (v) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund will be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter-of-credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits therein, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund must be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by IDEM.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter-of-credit described in Schedule B and by making payments from the Fund only upon receipt of one (1) of the following documents, either (a) or (b):

- (a) Certification from the Grantor and the third party claimant or claimants that the liability claim must be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant or claimants], hereby certify that the claim of bodily injury, property damage, or bodily injury and property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility

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must be paid in the amount of [in words] U.S. dollars \$ _____.

[Signature]

Grantor _____

[Signature or signatures]

Claimant or claimants _____

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund must consist of the proceeds from the letter-of-credit drawn upon by the Trustee in accordance with the requirements of 329 IAC 3.1-14-37 and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

(a) securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), must not be acquired or held, unless they are securities or other obligations of the federal or state government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest therein.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one that may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee must at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund must be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the

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extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee must be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement must not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section must be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions by the Grantor to the Trustee must be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee must be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or IDEM or both except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this trust must be irrevocable and must continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, must be delivered to the Grantor.

The commissioner will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement must be administered, construed, and enforced according to the laws of Indiana.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement must not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-40 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

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[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgement that must accompany the trust agreement for a standby trust fund as specified in 329 IAC 3.1-14-24(h) or 329 IAC 3.1-15-8(g):

Form of certification of acknowledgement.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(c) The following is an example of the Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement.):

Form of Indiana certification of acknowledgement.

ACKNOWLEDGEMENT

State of _____

County of _____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199__.

State of: _____

County of residence: _____

Notary Public

Commission Expires: _____

(Solid Waste Management Board; 329 IAC 3.1-14-40; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2013; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 15. Financial Requirements for Final (State) Permitted Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

329 IAC 3.1-15-1 Applicability

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.140

Sec. 1. (a) Sections 3 through 4 and 8 through 10 of this rule apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or are excluded from permit requirements in 40 CFR 264.1.

(b) Sections 5 through 6 of this rule apply only to owners and operators of:

- (1) disposal facilities;
- (2) piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in 40 CFR 264.228 and 40 CFR 264.258;
- (3) tank systems that are required under 40 CFR 264.197 to meet the requirements for landfills; and
- (4) containment buildings that are required under 40 CFR 264.1102 to meet the requirements for landfills.

(c) States and the federal government are exempt from the requirements of this rule. (Solid Waste Management Board; 329

IAC 3.1-15-1; filed Jan 24, 1992, 2:00 p.m.: 15 IR 981; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3362; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-2 Definitions

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.141

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Closure plan" means the plan for closure prepared in accordance with 40 CFR 264.112.

(c) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with section 3(a) through 3(c) of this rule.

(d) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with section 5(a) through 5(c) of this rule.

(e) "Parent corporation" means a corporation that directly owns at least fifty percent (50%) of the voting stock of the corporation that is the facility owner or operator; the corporation that is the facility owner or operator is deemed a subsidiary of the parent corporation.

(f) "Post-closure plan" means the plan for post-closure care prepared in accordance with 40 CFR 264.117 through 40 CFR 264.120.

(g) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage and are intended to assist in the understanding of this rule and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) "Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(3) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(4) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(5) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(6) "Net working capital" means current assets minus current liabilities.

(7) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(8) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as good will and rights to patents or royalties.

(h) In the liability insurance requirements in section 8 of this rule, the terms "bodily injury" and "property damage" must have the meanings given these terms by applicable state law. However, these terms do not include those liabilities, which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The board intends the meanings of other terms used in the liability insurance requirements in section 8 of this rule to be consistent with their common meanings within the insurance industry. The following definitions are terms intended to assist in the understanding of this rule and are not intended to limit meanings in a way that conflicts with general insurance industry usage:

(1) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(2) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(3) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(4) "Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

(Solid Waste Management Board; 329 IAC 3.1-15-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 981; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2017; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-3 Cost estimate for closure

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.142

Sec. 3. (a) The owner or operator shall keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 264.111 through 40 CFR 264.115 and applicable closure requirements in 40 CFR 264.178, 40 CFR 264.197, 40 CFR 264.228, 40 CFR 264.258, 40 CFR 264.280, 40 CFR 264.310, 40 CFR 264.351, 40 CFR 264.601 through 40 CFR 264.603, and 40 CFR 264.1102 as follows:

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. See 40 CFR 264.112(b).

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of "parent corporation" in section 2(e) of this rule. The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous waste if applicable under 40 CFR 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero (0) cost for hazardous wastes, or nonhazardous waste if applicable under 40 CFR 264.113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 4 of this rule. For owners and operators using the financial test or guarantee, the closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the commissioner as specified in section 4(g)(3) of this rule. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, as follows:

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than thirty (30) days after the commissioner has approved the request to modify the closure plan if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility:

(1) The latest closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted closure cost estimate.

(Solid Waste Management Board; 329 IAC 3.1-15-3; filed Jan 24, 1992, 2:00 p.m.: 15 IR 982; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3362; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-4 Financial assurance for closure

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; IC 13-30-3; 40 CFR 264.143

Sec. 4. (a) An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (b) through (g).

(b) The requirements for a closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined

by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial final state permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, recovery, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current closure cost estimate.
 CV = The current value of the trust fund.
 Y = The number of years remaining in the pay-in-period.

(B) If an owner or operator establishes a trust fund as specified in this subsection, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current closure cost estimate.
 CV = The current value of the trust fund.
 Y = The number of years remaining in the pay-in-period.

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision (3).

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this section or in 329 IAC 3.1-14, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-5 as applicable.

(6) After the pay-in-period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

- (A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate; or
- (B) obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for partial or final closure activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies, in writing, if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(11) The commissioner shall agree to termination of the trust when:

- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(c) The requirements for a surety bond guaranteeing payment into a closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

- (A) authorized to do business in Indiana; and
- (B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(b) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

- (A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
- (B) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
 - (i) Payments into the trust fund as specified in subsection (b).
 - (ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current closure cost estimates.
 - (iii) Annual valuations as required by the trust agreement.
 - (iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall complete one (1) of the following:

- (A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.
- (B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.
- (C) Provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate except as provided in subsection (h).

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator,

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within sixty (60) days after the increase, shall either:

- (A) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or
- (B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in this section.

(d) The requirements for a surety bond guaranteeing performance of closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

- (A) authorized to do business in Indiana; and
- (B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(c) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

- (A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
- (B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
 - (i) Payments into the trust fund as specified in subsection (b).
 - (ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current closure cost estimates.
 - (iii) Annual valuations as required by the trust agreement.
 - (iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall:

- (A) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or
- (B) provide alternate financial assurance as specified in this section and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond, the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

- (A) cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or
- (B) obtain other financial assurance as specified in this section.

Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost

estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent when:

- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(e) The requirements for a closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue a letter-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter-of-credit must be identical to the wording specified in section 10(d) of this rule.

(3) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:

- (A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.
- (B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
 - (i) Payments into the trust fund as specified in subsection (b).
 - (ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current closure cost estimates.
 - (iii) Annual valuations as required by the trust agreement.
 - (iv) Notices of nonpayment as required by the trust agreement.

(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date, and provide the following information:

- (A) The EPA identification number, name, and address of the facility.
- (B) The amount of funds assured for closure of the facility by the letter-of-credit.

(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(6) The letter-of-credit must be issued in an amount at least equal to the current closure cost estimate except as provided in subsection (h).

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

- (A) cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the commissioner; or
- (B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current

closure cost estimate following written approval by the commissioner.

(8) Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the commissioner may draw on the letter-of-credit.

(9) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution of the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and to obtain written approval of such assurance from the commissioner.

(10) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate except as provided in subsection (h). As used in this subsection, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy also must guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the commissioner shall instruct the insurer to make reimbursements in such amounts as the commissioner specifies in writing if the commissioner determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursements of such amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subdivision (10). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a major violation of this article warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

- (A) the commissioner deems the facility abandoned;
- (B) the permit is terminated or revoked or a new permit is denied;
- (C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;
- (D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11, United States Code; or
- (E) the premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, shall either:

- (A) cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner; or
- (B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(10) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

- (A) The owner or operator shall have the following:
 - (i) Two (2) of the following three (3) ratios:
 - (AA) A ratio of total liabilities to net worth less than two (2.0).
 - (BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
 - (CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
 - (ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.
 - (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (iv) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or
 - (BB) six (6) times the sum of the current closure and post-closure cost estimates.

(B) The owner or operator shall have the following:

- (i) A current rating for the most recent bond issuance of:
 - (AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
 - (BB) Aaa, Aa, A, or Baa as issued by Moody's.
- (ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.
- (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
- (iv) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or
 - (BB) six (6) times the sum of the current closure and post-closure cost estimates.

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- (2) As used in subdivision (1), “current closure and post-closure cost estimates” refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner’s or operator’s chief financial officer.
- (3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the commissioner:
- (A) A letter signed by the owner’s or operator’s chief financial officer and worded as specified in section 10(f) of this rule.
 - (B) A copy of the independent certified public accountant’s report on examination of the owner’s or operator’s financial statements for the latest completed fiscal year.
 - (C) A special report from the owner’s or operator’s independent certified public accountant to the owner or operator stating the following:
 - (i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.
 - (ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.
- (4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal.
- (5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).
- (6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.
- (7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.
- (8) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner’s or operator’s financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.
- (9) The owner or operator is no longer required to submit the items specified in subdivision (3) when:
- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
 - (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).
- (10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner as specified in subdivision (3). One (1) of these items must include the letter from the guarantor’s chief financial officer. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:
- (A) If the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall perform final closure in accordance with the closure plan and other permit requirements or establish a trust fund as specified in subsection (b)

in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner, as evidenced by the return receipts.

(C) If the owner or operator fails to:

(i) provide alternate financial assurance as specified in this section; and

(ii) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be as specified in subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for closure of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility unless the commissioner has reason to believe that final closure has not been in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any such reason that closure has not been in accordance with the approved closure plan. (*Solid Waste Management Board; 329 IAC 3.1-15-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 983; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2018; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2438*)

329 IAC 3.1-15-5 Cost estimate for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.144

Sec. 5. (a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, landfill unit, surface impoundment, or waste pile, required under 40 CFR 264.228 and 40 CFR 264.258 to prepare a contingent closure and post-closure plan shall keep at the facility a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in 40 CFR 264.117 through 40 CFR 264.120, 40 CFR 264.228, 40 CFR 264.258, 40 CFR 264.280, 40 CFR 264.310, 40 CFR 264.603, and the following:

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 2(e) of this rule.)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 40 CFR 264.117.

(b) During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within

sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with section 6 of this rule. For owners or operators using the financial test or guarantee, the post-closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before the submission of updated information to the commissioner as specified in section 6(g)(5) of this rule. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(c) During the active life of the facility, the owner or operator shall revise the post-closure cost estimate within thirty (30) days after the commissioner has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility:

(1) The latest post-closure cost estimate prepared in accordance with subsections (a) and (c).

(2) When this estimate has been adjusted in accordance with subsection (b), the latest adjusted post-closure cost estimate.

(Solid Waste Management Board; 329 IAC 3.1-15-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 990; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2026; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-6 Financial assurance for post-closure care

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 264.145

Sec. 6. (a) The owner or operator of a hazardous waste management unit subject to the requirements of section 5 of this rule shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility sixty (60) days prior to the initial receipt of hazardous waste or the effective date of this rule, whichever is later. The owner or operator shall choose from the options in this section.

(b) The requirements for a post-closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of acknowledgement in accordance with 329 IAC 3.1-14-26(b). Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the first final (state) permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the post-closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

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Where: CE = The current post-closure cost estimate.
CV = The current value of the trust fund.
Y = The number of years remaining in the pay-in-period.

(B) If an owner or operator establishes a trust fund as specified in this section, and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current post-closure cost estimate.
CV = The current value of the trust fund.
Y = The number of years remaining in the pay-in-period.

(4) The owner or operator may accelerate payments into the trust fund, or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision (3).

(5) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section or 329 IAC 3.1-14-15, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-15 as applicable.

(6) After the pay-in-period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate; or

(B) obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

(10) During the period of post-closure care, the commissioner may approve a release of funds if the owner or operator demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care.

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the trustee to make reimbursements in those amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the trustee to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(12) The commissioner shall agree to termination of the trust when:

(A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(c) The requirements for a surety bond guaranteeing payment into a post-closure trust fund are as follows:

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(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 10(b) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund as specified in subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator shall complete one (1) of the following:

(A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.

(B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin final closure, issued by the commissioner, becomes final or within fifteen (15) days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction.

(C) Provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance as specified in this section.

(d) The requirements for a surety bond guaranteeing performance of post-closure care are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must,

at a minimum, be:

- (A) authorized to do business in Indiana; and
 - (B) among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
- (2) The wording of the surety bond must be identical to the wording specified in section 10(c) of this rule.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:
- (A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
 - (B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
 - (i) Payments into the trust fund as specified in subsection (b).
 - (ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.
 - (iii) Annual valuations as required by the trust agreement.
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond must guarantee that the owner or operator shall:
- (A) perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or
 - (B) provide alternate financial assurance as specified in this section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.
- (5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond, the surety shall perform post-closure care in accordance with the post-closure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.
- (6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.
- (7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:
- (A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
 - (B) obtain other financial assurance as specified in this section.
- Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.
- (8) During the period of post-closure care, the commissioner may approve a decrease in the penal sum if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.
- (9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner, as evidenced by the return receipts.
- (10) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent when:
- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
 - (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).
- (11) The surety shall not be liable for deficiencies in the performance of post-closure care by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).
- (e) The requirements for a post-closure letter-of-credit are as follows:
- (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new

facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. This issuing institution must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

- (2) The wording of the letter-of-credit must be identical to the wording specified in section 10(d) of this rule.
 - (3) The owner or operator who uses a letter-of-credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:
 - (A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.
 - (B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this rule:
 - (i) Payments into the trust fund as specified in subsection (b).
 - (ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.
 - (iii) Annual valuations as required by the trust agreement.
 - (iv) Notices of nonpayment as required by the trust agreement.
 - (4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:
 - (A) The EPA identification number, name, and address of the facility.
 - (B) The amount of funds assured for post-closure care of the facility by the letter-of-credit.
 - (5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.
 - (6) The letter-of-credit must be issued in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).
 - (7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:
 - (A) cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the commissioner; or
 - (B) obtain other financial assurance as specified in this section to cover the increase.
- Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.
- (8) During the period of post-closure care, the commissioner may approve a decrease in the amount of the letter-of-credit if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.
 - (9) Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the commissioner may draw on the letter-of-credit.
 - (10) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that the issuing institution has decided not to extend the letter-of-credit beyond the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the commissioner.
 - (11) The commissioner shall return the letter-of-credit to the issuing institution for termination when:
 - (A) the owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for post-closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate except as provided in subsection (h). As used in this subsection, "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy also must guarantee that once post-closure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to such party or parties as the commissioner specifies.

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure activities, the commissioner shall instruct the insurer to make reimbursement in those amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the insurer to make such reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in subdivision (11). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a major violation of this article, warranting such remedy as the commissioner deems necessary and is authorized to make. Such violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) the commissioner deems the facility abandoned;

(B) the permit is terminated or revoked or a new permit is denied;

(C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;

(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11, United States Code; or

(E) the premium due is paid.

(9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(B) obtain other financial assurance as specified in this section to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for twenty-six (26) week Treasury securities.

(11) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for post-closure care are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

- (A) The owner or operator shall have the following:
 - (i) Two (2) of the following three (3) ratios:
 - (AA) A ratio of total liabilities to net worth less than two (2.0).
 - (BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
 - (CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
 - (ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates.
 - (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (iv) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or
 - (BB) six (6) times the sum of the current closure and post-closure cost estimates.
- (B) The owner or operator shall have the following:
 - (i) A current rating for the most recent bond issuance of:
 - (AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
 - (BB) Aaa, Aa, A, or Baa as issued by Moody's.
 - (ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates.
 - (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (iv) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or
 - (BB) six (6) times the sum of the current closure and post-closure cost estimates.

(2) As used in subdivision (1), "current closure and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:

- (A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.
- (B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
- (C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
 - (i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.
 - (ii) In connection with that procedure, no matters came to the attention of the independent certified public

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accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

(8) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

(9) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

- (A) the owner or operator substitutes alternate financial assurance as specified in this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (9) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner as specified in subdivision (3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other permit requirements or establish a trust fund as specified in subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the commissioner as evidenced by the return receipts.

(C) If the owner or operator fails to:

- (i) provide alternate financial assurance as specified in this section; and
- (ii) obtain the written approval of such alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor;

the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be as specified in subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for post-closure care of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) Within sixty (60) days after receiving certification from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the commissioner shall notify the owner or operator that the owner or operator is no longer required to maintain financial assurance for post-closure care of that unit, unless the commissioner has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The commissioner shall provide the owner or operator with a detailed written statement of any such reason that post-closure care has not been in accordance with the approved post-closure plan. (*Solid Waste Management Board; 329 IAC 3.1-15-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 991; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2026; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2445*)

329 IAC 3.1-15-7 Use of a mechanism for financial assurance of both closure and post-closure care

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.146

Sec. 7. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter-of-credit, insurance, financial test, or guarantee that meets the specifications for the mechanism in both sections 4 and 6 of this rule. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and post-closure care. (*Solid Waste Management Board; 329 IAC 3.1-15-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 998; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2034; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-15-8 Liability requirements

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.147

Sec. 8. (a) An owner or operator of a hazardous waste treatment, storage, recovery, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars (\$1,000,000) per occurrence with an annual aggregate of at least two million dollars (\$2,000,000), exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of the following six (6) ways:

- (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified as follows:
 - (A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 10(i) of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 10(j) of this rule. The owner or operator shall submit a signed duplicate original of the endorsement

or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (e) or by using the guarantee for liability coverage as specified in subsection (f).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (g).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (h).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (i).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify the other assurance as excess coverage.

An owner or operator shall notify the commissioner in writing within thirty (30) days whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this subsection, a certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under this subsection, or a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under this subsection.

(b) An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste or a group of such facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars (\$3,000,000) per occurrence with an annual aggregate of at least six million dollars (\$6,000,000), exclusive of legal defense costs. An owner or operator who meets the requirements of this subsection may combine the required per occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per occurrence level and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least four million dollars (\$4,000,000) per occurrence and eight million dollars (\$8,000,000) annual aggregate. This liability coverage may be demonstrated in one (1) of the following six (6) ways as specified in subdivisions (1) through (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision as follows:

(A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in section 10(i) of this rule. The wording of the certificate of insurance must be identical to the wording specified in section 10(j) of this rule. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment,

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storage, recovery, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(B) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (e) or by using the guarantee for liability coverage as specified in subsection (f).

(3) An owner or operator may meet the requirements of this section by obtaining a letter-of-credit for liability coverage as specified in subsection (g).

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (h).

(5) An owner or operator may meet the requirements of this section by establishing a trust fund for liability coverage as specified in subsection (i).

(6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance, financial test, guarantee, letter-of-credit, surety bond, or trust fund except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this subsection. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as primary coverage and shall specify the other assurance as excess coverage.

(7) An owner or operator shall notify the commissioner in writing within thirty (30) days whenever any of the following occurs:

(A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions (1) through (6).

(B) A certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third party claimant for liability coverage under subdivisions (1) through (6).

(C) A final court order establishing a judgment for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivisions (1) through (6).

(8) If an owner or operator demonstrates to the satisfaction of the commissioner that the levels of financial responsibility required by subsection (a) or this subsection are not consistent with the degree and duration of risk associated with treatment, storage, recovery, or disposal at the facility or group of facilities, the owner or operator may obtain an exemption from the commissioner. The request for exemption must be submitted to the commissioner as part of the application under 40 CFR 270.14 for a facility that does not have a permit, or pursuant to the procedures for permit modification under 329 IAC 3.1-13-7 for a facility that has a permit. If granted, the exemption must take the form of an adjusted level of required liability coverage, with such level to be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The commissioner may require an owner or operator who requests an exemption to provide such technical and engineering information as is deemed necessary by the commissioner to determine a level of financial responsibility other than that required by subsection (a) or this subsection. Any request for an exemption for a permitted facility must be treated as a request for a permit modification under 40 CFR 270.41(a)(5) and 329 IAC 3.1-13-7.

(c) If the commissioner determines that the levels of financial responsibility required by subsection (a) or (b) are not sufficient for the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the commissioner may adjust the level of financial responsibility required under subsection (a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not a surface impoundment, landfill, or land treatment facility, the commissioner may require that an owner or operator of the facility comply with subsection (b). An owner or operator shall furnish to the commissioner, within ninety (90) days, any information that the commissioner requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit must be treated as a permit modification

under 329 IAC 3.1-13-7.

(d) Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility unless the commissioner has reason to believe that closure has not been in accordance with the approved closure plan.

(e) The requirements for a financial test for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

- (i) Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test.
- (ii) Tangible net worth of at least ten million dollars (\$10,000,000).
- (iii) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or
 - (BB) six (6) times the amount of liability coverage to be demonstrated by this test.

(B) The owner or operator shall have the following:

- (i) A current rating for the most recent bond issuance of:
 - (AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
 - (BB) Aaa, Aa, A, or Baa as issued by Moody's.
- (ii) Tangible net worth of at least ten million dollars (\$10,000,000).
- (iii) Tangible net worth at least six (6) times the amount of liability coverage to be demonstrated by this test.
- (iv) Assets located in the United States amounting to at least:
 - (AA) ninety percent (90%) of the total assets; or
 - (BB) six (6) times the amount of liability coverage to be demonstrated by this test.

(2) As used in subdivision (1), "amount of liability coverage" refers to the annual aggregate amounts for which coverage is required under subsections (a) through (b).

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(g) of this rule. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by sections 4(g) and (6)(g) of this rule, and liability coverage, the owner or operator shall submit the letter specified in section 10(g) of this rule to cover both forms of financial responsibility. A separate letter as specified in section 10(f) of this rule is not required.

(B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

- (i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements.
- (ii) In connection with that procedure, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall obtain insurance, a letter-of-credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified

in this section. Evidence of liability coverage must be submitted to the commissioner within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the test requirements.

(7) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. (See subdivision (3)(B).) An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty (30) days after notification of disallowance.

(f) The requirements for a guarantee for liability coverage are as follows:

(1) Subject to subdivision (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsection (e). The wording of the guarantee must be identical to the wording specified in 329 IAC 3.1-14-34. A certified copy of the guarantee must accompany the items sent to the commissioner as specified in subsection (e)(3). One (1) of these items must include the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall satisfy the judgment or pay the amount agreed to in settlement of claims up to the limits of coverage.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. The guarantee may not be terminated unless and until the commissioner approves in writing alternate liability coverage complying with 329 IAC 3.1-14-24 or this section.

(2) In the case of the corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the attorney general or insurance commissioner of the state in which the guarantor is incorporated; and

(B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a guarantee executed as described in this section and 329 IAC 3.1-14-34 is a legally valid and enforceable obligation in that state.

(3) In the case of the corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the non-U.S. corporation has identified a registered agent for service of process in Indiana and in the state in which it has its principal place of business; and

(B) the attorneys general or insurance commissioners of Indiana and the state in which the guarantor corporation has its principal place of business have submitted a written statement to the commissioner that a guarantee executed as described in this section and 329 IAC 3.1-14-34 is a legally valid and enforceable obligation in that state.

(g) The requirements for a letter-of-credit for liability coverage are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and by submitting a copy of the letter-of-credit to the commissioner.

(2) The financial institution issuing the letter-of-credit must be an entity that has the authority to issue letters-of-credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(3) The wording of the letter-of-credit must be identical to the wording specified in 329 IAC 3.1-14-37.

(4) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter-of-credit, all amounts paid pursuant to a draft by the trustee of the standby trust must be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The wording of the standby trust fund must be identical to the wording specified in 329 IAC 3.1-14-40.

(h) The requirements for a surety bond for liability coverage are as follows:

- (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this section and by submitting a copy of the bond to the commissioner.
- (2) The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the current Circular 570 of the U.S. Department of the Treasury.
- (3) The wording of the surety bond must be identical to the wording specified in 329 IAC 3.1-14-38.
- (4) A surety bond may be used to satisfy the requirements of this section only if:
 - (A) the attorney general or insurance commissioner of the state in which the surety is incorporated; and
 - (B) the attorney general or insurance commissioner of Indiana;

have submitted a written statement to the commissioner that a surety bond executed as described in this subsection and 329 IAC 3.1-14-38 is a legally valid and enforceable obligation in that state.

(i) The requirements for trust fund for liability coverage are as follows:

- (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the commissioner.
- (2) The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- (3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund or within one hundred twenty (120) days of the reduction, whichever is sooner, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of the liability coverage to be provided or obtain other financial assurance as specified in this section to cover the difference. As used in this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden, nonsudden, or sudden and nonsudden occurrences required to be provided by the owner or operator by this subsection, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.
- (4) The wording of the trust fund must be identical to the wording specified in 329 IAC 3.1-14-39.

(Solid Waste Management Board; 329 IAC 3.1-15-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 998; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2034; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 3.1-15-9 Incapacity of owners or operators, guarantors, or financial institutions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.148

Sec. 9. (a) An owner or operator shall notify the commissioner by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., October 1, 1979, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a guarantee as specified in sections 4(g) and 6(g) of this rule shall make such a notification if the guarantor is named as debtor as required under the terms of the guarantee in section 10(h) of this rule.

(b) An owner or operator who fulfills the requirements of section 4, 6, or 8 of this rule by obtaining a trust fund, surety bond, letter-of-credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or the institution issuing the surety bond, letter-of-credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within sixty (60) days after such an event. *(Solid Waste Management Board; 329 IAC 3.1-15-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 1001; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2039; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 3.1-15-10 Wording of instruments

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 264.151

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Sec. 10. (a) A trust agreement for a trust fund, as specified in section 4(b) or 6(b) of this rule, 329 IAC 3.1-14-5, or 329 IAC 3.1-14-15, must be worded identically as in 329 IAC 3.1-14-26 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 4(c) or 6(c) of this rule, 329 IAC 3.1-14-6, or 329 IAC 3.1-14-16, must be worded identically as in 329 IAC 3.1-14-27 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(c) A surety bond guaranteeing performance of closure, post-closure care, or closure and post-closure care, as specified in section 4(d) or 6(d) of this rule, must be worded identically to 329 IAC 3.1-14-28 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(d) A letter-of-credit, as specified in section 4(e) or 6(e) of this rule, 329 IAC 3.1-14-7, or 329 IAC 3.1-14-17, must be worded identically to 329 IAC 3.1-14-29 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(e) A certificate of insurance, as specified in section 4(f) or 6(f) of this rule, 329 IAC 3.1-14-8, or 329 IAC 3.1-14-18, must be worded identically to 329 IAC 3.1-14-30 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(f) A letter from the chief financial officer, as specified in section 4(g) or 6(g) of this rule, 329 IAC 3.1-14-9, or 329 IAC 3.1-14-19, must be worded identically to 329 IAC 3.1-14-31 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(g) A letter from the chief financial officer, as specified in section 8(e) of this rule or 329 IAC 3.1-14-24(f), must be worded identically to 329 IAC 3.1-14-32 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(h) A guarantee, as specified in section 4(g) or 6(g) of this rule, 329 IAC 3.1-14-9, or 329 IAC 3.1-14-19, must be worded identically to 329 IAC 3.1-14-33 except that instructions in brackets are to be replaced with relevant information and the brackets deleted. A guarantee, as specified in section 8(f) of this rule or 329 IAC 3.1-14-24(g), must be worded identically to 329 IAC 3.1-14-34 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(i) A hazardous waste facility liability endorsement, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-35 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(j) A certificate of liability insurance, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-36 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(k) A letter-of-credit for liability coverage, as required in section 8(g) of this rule or 329 IAC 3.1-14-24(h), must be worded identically to 329 IAC 3.1-14-37 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(l) A surety bond for liability coverage, as required in section 8(h) of this rule or 329 IAC 3.1-14-24(i), must be worded identically to 329 IAC 3.1-14-38 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(m) A trust agreement for liability coverage, as required in section 8(i) of this rule or 329 IAC 3.1-14-24(j), must be worded identically to 329 IAC 3.1-14-39 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(n) A standby trust agreement for liability coverage, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-40 except that instructions in brackets are to be replaced with relevant information and the brackets deleted. (*Solid Waste Management Board; 329 IAC 3.1-15-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 1001; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2039; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 16. Universal Waste

329 IAC 3.1-16-1 Adoption of universal waste rule

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; 40 CFR 273

Sec. 1. Except as provided otherwise in section 2 of this rule, 40 CFR 273 is incorporated by reference. (*Solid Waste Management Board; 329 IAC 3.1-16-1; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 3.1-16-2 Exceptions and additions; petitions to add a universal waste

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-14-8-5; IC 13-22-2; 40 CFR 273

Sec. 2. (a) Exceptions and additions to 40 CFR 273 include the following:

(1) In addition to the waste management requirements in 40 CFR 273.13(d), add the following: A small quantity handler of universal waste shall not intentionally break or crush universal waste lamps.

(2) In addition to the labeling and marking requirements in 40 CFR 273.14(a), add the following: Other words that accurately identify the universal waste batteries may be used.

(3) In addition to the labeling and marking requirements in 40 CFR 273.14(d) add the following: Other words that accurately identify the universal waste thermostats may be used.

(4) In addition to the labeling and marking requirements in 40 CFR 273.14(e) add the following: Other words that accurately identify the universal waste lamps may be used.

(5) In addition to the waste management requirements in 40 CFR 273.33(d), add the following: A large quantity handler of universal waste shall not intentionally break or crush universal waste lamps.

(6) In addition to the labeling and marking requirements in 40 CFR 273.34, [sic.] 40 CFR 273.34(a), add the following: Other words that accurately identify the universal waste batteries may be used.

(7) In addition to the labeling and marking requirements in 40 CFR 273.34(d) add the following: Other words that accurately identify the universal waste thermostats may be used.

(8) In addition to the labeling and marking requirements in 40 CFR 273.34(e) add the following: Other words that accurately identify the universal waste lamps may be used.

(b) In addition to the petition procedures in 40 CFR 273, Subpart G, add the following: Any person seeking to add a hazardous waste or a category of hazardous waste to this article must do one (1) of the following:

(1) Petition for a regulatory amendment under IC 13-14-8-5. Citizen rulemaking petition procedures were published in the Indiana Register on June 1, 1995, at 18 IR 2355. Criteria for adding a hazardous waste or a category of hazardous waste to this rule are found at 40 CFR 273.80 and 40 CFR 273.81.

(2) Present evidence to the commissioner that demonstrates that the waste meets the criteria of 40 CFR 273.80 and 40 CFR 273.81 for inclusion under 40 CFR Part 273. If the evidence presented demonstrates to the satisfaction of the commissioner that regulation of the waste under the universal waste regulations of 40 CFR Part 273 and this section is appropriate for that waste or category of waste and meets the guidelines of 40 CFR 273.80(b), the commissioner will initiate a rulemaking action to amend this article appropriately.

(Solid Waste Management Board; 329 IAC 3.1-16-2; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3368; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2452)

ARTICLE 4. PCB WASTE MANAGEMENT (REPEALED)

(Repealed by Solid Waste Management Board; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083)

ARTICLE 4.1. REGULATION OF WASTES CONTAINING PCBs

Rule 1. General Provisions

329 IAC 4.1-1-1 Applicability

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. This article applies to a person who disposes of solid or liquid waste containing PCBs. *(Solid Waste Management Board; 329 IAC 4.1-1-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3073)*

329 IAC 4.1-1-2 Enforcement

Authority: IC 13-20-15-1

Affected: IC 13-14-2-6; IC 13-20-15-6; IC 13-30-3

Sec. 2. This article is enforced under IC 13-14-2-6 or IC 13-30-3, or both. No date contained in the federal regulations incorporated by reference in this article shall be construed to allow or require retroactive enforcement of this article. (*Solid Waste Management Board; 329 IAC 4.1-1-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3073*)

329 IAC 4.1-1-3 Penalties

Authority: IC 13-20-15-1; IC 13-20-15-7

Affected: IC 13-20-15-6

Sec. 3. Penalties for violations of this article are listed in IC 13-20-15-7. (*Solid Waste Management Board; 329 IAC 4.1-1-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3073*)

329 IAC 4.1-1-4 Variances

Authority: IC 13-14-8-8; IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 4. The commissioner may grant a variance from compliance with the provisions of this article in accordance with IC 13-14-8-8. (*Solid Waste Management Board; 329 IAC 4.1-1-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3074*)

329 IAC 4.1-1-5 Dilution

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 5. No person may avoid any provision specifying a PCB concentration by diluting the PCBs unless otherwise specifically provided. (*Solid Waste Management Board; 329 IAC 4.1-1-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3074*)

329 IAC 4.1-1-6 Incorporation by reference

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 6. (a) When incorporated by reference in this article, references to 40 CFR 264 and 40 CFR 761 shall mean the version of that publication revised as of July 1, 1999.

(b) Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) Table 1 shows documents referenced in 40 CFR 761 and the updated versions of those documents that must be used to comply with this article.

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Table 1.

Version Referenced in 40 CFR 761	Version to be Used	Source
40 CFR 136 as amended in 41 FR 52779 on December 1, 1976	40 CFR 136, revised as of July 1, 1999	1
“Thermal Processing and Land Disposal of Solid Waste” (39 FR 29337, Aug. 14, 1974)	40 CFR 240, revised as of July 1, 1999; 40 CFR 257, revised as of July 1, 1999; and 40 CFR 258, revised as of July 1, 1999	1
U.S. Department of Transportation (DOT) or U.S. Postal Service (USPS) shipping requirements, found respectively in 49 CFR 173.345 and U.S. Postal Regulations 652.2 and 652.3	49 CFR 172, revised as of October 1, 1999	1
ASTM Standard D93-90	ASTM Standard D93-99	2
ASTM Standard D129-64	ASTM Standard D129-95	2
ASTM Standard D240-87	ASTM Standard 240-92 (Reapproved 1997) ^{e2}	2
ASTM Standard E258-67 (Reapproved 1987)	ASTM Standard E258-67 (Reapproved 1996) ^{e1}	2
ASTM Standard D482-87	ASTM Standard D482-95	2
ASTM Standard D524-88	ASTM Standard D524-97	2
ASTM Standard D808-87	ASTM Standard D808-95	2
ASTM Standard D923-86 or ASTM Standard D923-89	ASTM Standard D923-97	2
ASTM Standard D1266-87	ASTM Standard D1266-98	2
ASTM Standard D1796-83 (Reapproved 1990)	ASTM Standard D1796-97	2
ASTM Standard D2158-89	ASTM Standard D2158-97	2
ASTM Standard D2709-88	ASTM Standard D2709-96 ^{e1}	2
ASTM Standard D2784-89	ASTM Standard D2784-98	2
ASTM Standard D3178-84	ASTM Standard D3178-89 (Reapproved 1997)	2
ASTM Standard D3278-89	ASTM Standard D3278-96 ^{e1}	2
ASTM Standard D4059	ASTM Standard D4059-96	2
“Visual Standard No. 2, Near-White Blast Cleaned Surface Finish”, of the National Association of Corrosion Engineers (NACE)	Joint Surface Preparation Standard NACE No. 2/SSPC-SP 10 “Near-White Metal Blast Cleaning”, Approved October 1994	3
“Visual Standard No. 3, Commercial Blast Cleaned Surface Finish”, of the National Association of Corrosion Engineers (NACE)	Joint Surface Preparation Standard NACE No. 3/SSPC-SP 6 “Commercial Blast Cleaning”, Approved October 1994	3

Source 1: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone (202) 512-1800.

Source 2: American Society for Testing and Materials, Customer Services, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, telephone (610) 832-9555.

Source 3: NACE International, P.O. Box 218340, Houston, Texas 77218-8340, telephone (281) 228-6200; or Steel Structures Painting Council, 4516 Henry Street, Suite 301, Pittsburgh, Pennsylvania 15213-3728, telephone (412) 687-1113.

(d) Table 2 shows documents referenced in 40 CFR 761 with no specified edition and provides the date of the edition that must be used to comply with this article.

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Table 2.

Document Referenced in 40 CFR 761	Edition to be Used	Source
SW-846 or “Test Methods for Evaluating Solid Waste, Physical Chemical Methods”, U.S. Environmental Protection Agency Publication SW-846	Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)	1
Occupational Safety and Health Standards, 29 CFR 1910.106, Flammable and combustible liquids	Revised as of July 1, 1999	1
40 CFR 60 (referred to as part 60 of this chapter)	Revised as of July 1, 1999	1
40 CFR 112 (referred to as part 112 of this title)	Revised as of July 1, 1999	1
40 CFR 112.1(d)(2)	Revised as of July 1, 1999	1
40 CFR 112.4	Revised as of July 1, 1999	1
40 CFR 122 (referred to as part 122 of this chapter)	Revised as of July 1, 1999	1
40 CFR 264.143 (referred to as section 264.143 of this chapter)	Revised as of July 1, 1999	1
40 CFR 264.151 (referred to as section 264.151 of this chapter)	Revised as of July 1, 1999	1
40 CFR 264.175 (referred to as section 264.175 of this chapter)	Revised as of July 1, 1999	1
40 CFR 266, Subpart H (referred to as part 266, subpart H of this chapter)	Revised as of July 1, 1999	1
40 CFR 270.66 (referred to as section 270.66 of this chapter)	Revised as of July 1, 1999	1
DOT Hazardous Materials Regulations at 49 CFR parts 171 through 180	Revised as of October 1, 1999	1
49 CFR Chapter I, Subchapter C	Revised as of September 30, 1991	1
49 CFR 171.14	Revised as of October 1, 1999	1
“Verification of PCB Spill Cleanup by Sampling and Analysis”, Midwest Research Institute	“Verification of PCB Spill Cleanup by Sampling and Analysis”, U.S. Environmental Protection Agency Publication EPA-560/5-85-026, August 1985	2
“Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup”, Midwest Research Institute	“Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup”, U.S. Environmental Protection Agency Publication EPA-560/5-86-017, May 1986	2
“Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy”, dated June 23, 1987 and revised on April 18, 1991	“Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy”, June 23, 1987, revised and clarified on April 18, 1991	2

Source 1: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone (202) 512-1800.

Source 2: TSCA Technical Information Service, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, telephone (202) 554-1404.

(Solid Waste Management Board; 329 IAC 4.1-1-6; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3074)

Rule 2. Definitions

329 IAC 4.1-2-1 Applicability; incorporation by reference

Authority: IC 13-20-15-1

Affected: IC 13-11-2; IC 13-20-15-6

Sec. 1. (a) The definitions in IC 13-11-2 apply to this article. In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article.

(b) The definitions at 40 CFR 761.3 are incorporated by reference, except as provided otherwise in section 2 of this rule.

(c) 40 CFR 761.3 is available for viewing and copying at the Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(d) The Code of Federal Regulations is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The telephone number for the Superintendent of Documents is (202) 512-1800. *(Solid Waste Management Board; 329 IAC 4.1-2-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)*

329 IAC 4.1-2-2 Exceptions and additions

Authority: IC 13-20-15-1

Affected: IC 13-11-2-155; IC 13-11-2-158; IC 13-20-15-6

Sec. 2. Exceptions and additions to the definitions in 40 CFR 761.3 are as follows:

(1) Delete the definition of “person” and substitute the definition at IC 13-11-2-158(a).

(2) Delete the definition of “PCB and PCBs” and substitute the definition of PCB at IC 13-11-2-155.

(Solid Waste Management Board; 329 IAC 4.1-2-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)

329 IAC 4.1-2-3 “Alternative disposal facility” defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 3. “Alternative disposal facility” means a facility that:

(1) separates, processes, recovers, treats, transfers, or disposes of PCB waste; and

(2) is not one (1) of the following:

(A) A chemical waste landfill.

(B) An incinerator.

(C) A high efficiency boiler.

(D) A mobile facility.

(E) A generator of PCB waste.

An alternative disposal facility is an alternative method of destroying PCBs as described in 40 CFR 761.60(e). *(Solid Waste Management Board; 329 IAC 4.1-2-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)*

329 IAC 4.1-2-4 “EPA” defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 4. “EPA” means the United States Environmental Protection Agency. *(Solid Waste Management Board; 329 IAC 4.1-2-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)*

329 IAC 4.1-2-5 “Mobile facility” defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 5. "Mobile facility" means machinery, equipment, or vehicles of any nature that are used or intended to be used at more than one (1) location for the:

- (1) separation;
- (2) processing;
- (3) recovery, as defined at 329 IAC 10-2-149; or
- (4) treatment;

of PCBs in a material or waste containing PCBs. (*Solid Waste Management Board; 329 IAC 4.1-2-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076*)

329 IAC 4.1-2-6 "Municipal solid waste landfill" or "MSWLF" defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 6. "Municipal solid waste landfill" or "MSWLF" has the meaning as set forth at 329 IAC 10-2-116. (*Solid Waste Management Board; 329 IAC 4.1-2-6; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076*)

329 IAC 4.1-2-7 "Municipal solid waste landfill unit" or "MSWLF unit" defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 7. "Municipal solid waste landfill unit" or "MSWLF unit" has the meaning as set forth at 329 IAC 10-2-117. (*Solid Waste Management Board; 329 IAC 4.1-2-7; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076*)

329 IAC 4.1-2-8 "Nonmunicipal solid waste landfill" defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 8. "Nonmunicipal solid waste landfill" has the meaning as set forth at 329 IAC 10-2-121. (*Solid Waste Management Board; 329 IAC 4.1-2-8; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076*)

329 IAC 4.1-2-9 "Single location" defined

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 9. "Single location" means an aggregation of one (1) or more facilities that are located on one (1) piece of property or on contiguous or adjacent properties, and that are owned or operated by the same person. (*Solid Waste Management Board; 329 IAC 4.1-2-9; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076*)

Rule 3. Conversion of Terms

329 IAC 4.1-3-1 Conversion of federal terms

Authority: IC 13-20-15-1

Affected: IC 13-11-2-71; IC 13-20-15-6

Sec. 1. When used in 40 CFR 264, Subpart D, and 40 CFR 761, as incorporated by reference in this article, substitute the following unless otherwise indicated:

- (1) "Act" means the environmental management laws as defined at IC 13-11-2-71.
- (2) "Administrator" or "assistant administrator" means the commissioner of the Indiana department of environmental management.
- (3) "Agency" means the Indiana department of environmental management.
- (4) "Director", "director, chemical management division", or "director, CMD" means the commissioner of the Indiana

department of environmental management.

(5) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.

(6) "He" means he or she, without regard to gender.

(7) "Notification requirements of Section 3010" means the notification requirements of this article.

(8) "RCRA permit" means state hazardous waste permit.

(9) "Regional administrator" means the commissioner of the Indiana department of environmental management.

(10) "She" means he or she, without regard to gender.

(11) "State", "authorized state", "approved state", and "approved program" means Indiana.

(12) "United States" means the state of Indiana.

(Solid Waste Management Board; 329 IAC 4.1-3-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)

Rule 4. Requirements for Disposal of Waste Containing PCBs

329 IAC 4.1-4-1 Requirements for storage and disposal incorporated by reference

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 761, Subpart D, consisting of 40 CFR 761.50 through 40 CFR 761.79, is incorporated by reference, except as provided otherwise in section 2 of this rule.

(b) 40 CFR 761, Subpart D is available for viewing and copying at the Office of Solid and Hazardous Waste Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The telephone number for the Superintendent of Documents is (202) 512-1800. *(Solid Waste Management Board; 329 IAC 4.1-4-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)*

329 IAC 4.1-4-2 Exceptions and additions

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6; 40 CFR 761, Subpart D

Sec. 2. Exceptions and additions to 40 CFR 761, Subpart D, are as follows:

(1) Delete 40 CFR 761.60(b)(2)(iii)(B).

(2) Delete 40 CFR 761.60(b)(2)(iv)(B).

(3) Delete 40 CFR 761.60(b)(2)(v).

(4) In 40 CFR 761.60(b)(2)(vi), delete "large PCB capacitors or".

(5) Delete 40 CFR 761.60(f)(1)(iii).

(6) In 40 CFR 761.65(b), delete "After July 1, 1978",.

(7) Delete 40 CFR 761.65(d)(1).

(Solid Waste Management Board; 329 IAC 4.1-4-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)

Rule 5. PCB Spill Cleanup Policy

329 IAC 4.1-5-1 PCB spill cleanup policy incorporated by reference

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 761, Subparts G and M through T are incorporated by reference, except as provided otherwise in section 2 of this rule.

(b) 40 CFR 761, Subparts G and M through T are available for viewing and copying at the Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the Superintendent of Documents, U.S. Government Printing Office,

Washington, D.C. 20402. The telephone number for the Superintendent of Documents is (202) 512-1800. (*Solid Waste Management Board; 329 IAC 4.1-5-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077*)

329 IAC 4.1-5-2 Exceptions and additions

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 2. Exceptions and additions to 40 CFR 761, Subparts G and M through T are as follows:

(1) In 40 CFR 761.398(a), delete “the Director, National Program Chemicals Division (NPCD), (7404), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC” and substitute “the commissioner”.

(2) In 40 CFR 761.398(a), delete “From time to time, the Director of NPCD will confirm the use of validated new decontamination solvents and publish the new solvents and validated decontamination procedures in the FEDERAL REGISTER”.

(*Solid Waste Management Board; 329 IAC 4.1-5-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077*)

Rule 6. PCB Waste Disposal Records and Reports

329 IAC 4.1-6-1 Requirements for PCB waste disposal records and reports incorporated by reference

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 761, Subpart K, consisting of 40 CFR 761.202 through 40 CFR 761.218, is incorporated by reference, except as provided otherwise in section 2 of this rule.

(b) 40 CFR 761, Subpart K is available for viewing and copying at the Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The telephone number for the Superintendent of Documents is (202) 512-1800. (*Solid Waste Management Board; 329 IAC 4.1-6-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077*)

329 IAC 4.1-6-2 Exceptions and additions

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 2. Exceptions and additions to 40 CFR 761, Subpart K, are as follows:

(1) Delete 40 CFR 761.202(c).

(2) In 40 CFR 761.205(a)(1), delete “April 4, 1990” and substitute a date six (6) months after the effective date of this article.

(3) In 40 CFR 761.205(b), delete “April 4, 1990” and substitute a date six (6) months after the effective date of this article.

(4) In 40 CFR 761.205(d), delete “Chief, Operations Branch (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460” and substitute “Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, P.O. Box 6015, Indianapolis, Indiana 46206-6015”.

(5) Delete 40 CFR 761.207(b). The manifest described in 329 IAC 3.1-7 and available from the department must not be used for manifesting of PCB shipments. Generators may use copies of EPA Form 8700-22 from any other source to comply with this article.

(6) In 40 CFR 761.202(b), delete “After June 4, 1990”.

(7) In 40 CFR 761.211(a), delete “After April 4, 1990”.

(*Solid Waste Management Board; 329 IAC 4.1-6-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077*)

Rule 7. Incinerators and High Efficiency Boilers

329 IAC 4.1-7-1 Applicability

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. This rule applies to incinerators and high efficiency boilers required to be approved by the commissioner under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.60 and 40 CFR 761.70 by reference. (*Solid Waste Management Board; 329 IAC 4.1-7-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078*)

329 IAC 4.1-7-2 General

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. Incinerators and high efficiency boilers must comply with 329 IAC 4.1-4 through 329 IAC 4.1-6. (*Solid Waste Management Board; 329 IAC 4.1-7-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078*)

329 IAC 4.1-7-3 Location restrictions

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6; IC 36-7-4

Sec. 3. (a) An incinerator or high efficiency boiler must comply with all zoning and location restrictions of the political subdivision in which the facility is located, if any are imposed.

(b) The owner or operator shall provide documentation that all required zoning and other local approvals, if any are required, have been obtained before written approval is requested under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.60 and 40 CFR 761.70 by reference, is requested. Documentation that all required zoning and other local approvals, if any are required, have been obtained may include the following:

- (1) A copy of the zoning requirements, if any, for solid waste facilities in the area where the facility is to be located.
- (2) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area where the facility is to be located.
- (3) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if a change in the zone maps is required for the area where the facility is to be located.
- (4) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if such amendment is required for the area where the facility is to be located.
- (5) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq., if such approval is required for the area where the facility is to be located.
- (6) The status of any appeal of any zoning determination as described in subdivisions (2) through (5) and, if none is pending, the date by which the appeal must be initiated.

(c) The owner or operator of an incinerator or high efficiency boiler shall not dredge or fill wetlands, except in compliance with an appropriate permit required by Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). (*Solid Waste Management Board; 329 IAC 4.1-7-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078*)

329 IAC 4.1-7-4 Public notice and public participation

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. Each applicant submitting a request for approval for an incinerator or high efficiency boiler under 329 IAC 4.1-4-1 shall comply with the public notice and public participation requirements in 329 IAC 10-12-1 as follows:

- (1) For an incinerator or high efficiency boiler for which construction was started prior to the effective date of this article, the owner or operator shall comply with 329 IAC 10-12-1 before starting operation under this article.
- (2) For an incinerator or high efficiency boiler for which construction is started on or after the effective date of this article, the owner or operator shall comply with 329 IAC 10-12-1 before beginning construction.

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(Solid Waste Management Board; 329 IAC 4.1-7-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)

329 IAC 4.1-7-5 Notice of activity

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 5. (a) The owner or operator of an incinerator or high efficiency boiler shall notify the following at least thirty (30) days before beginning any storage, separation, processing, recovery, treatment, or disposal of waste containing PCBs:

(1) Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

(2) The county health department for the county in which the facility is located.

(3) The emergency management director and the local emergency planning committee for the county in which the facility is located.

(4) The fire department with jurisdiction over the facility.

(b) Upon completion of any separation, processing, recovery, or treatment of PCB waste regulated under this article, the owner or operator of an incinerator or high efficiency boiler shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either:

(1) PCB disposal notification; or

(2) analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-7-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)

Rule 8. Chemical Waste Landfills

329 IAC 4.1-8-1 Applicability

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. This rule applies to chemical waste landfills required to be approved by the commissioner under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.75(c) by reference. *(Solid Waste Management Board; 329 IAC 4.1-8-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079)*

329 IAC 4.1-8-2 General

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 2. A chemical waste landfill must comply with 329 IAC 4.1-4 through 329 IAC 4.1-6. *(Solid Waste Management Board; 329 IAC 4.1-8-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079)*

329 IAC 4.1-8-3 Location restrictions

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6; IC 36-7-4

Sec. 3. (a) A chemical waste landfill must comply with the location restrictions in 329 IAC 10-16 that apply to a new MSWLF or MSWLF unit permitted under 329 IAC 10, except that the reduction of setback distances in 329 IAC 10-16-12 does not apply to a chemical waste landfill.

(b) The owner or operator shall provide documentation that all required zoning and other local approvals, if any are required, have been obtained before written approval is requested under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.75(c) by reference, is requested. Documentation that all required zoning and other local approvals, if any are required, have been obtained may include the following:

(1) A copy of the zoning requirements, if any, for solid waste facilities in the area where the facility is to be located.

(2) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for

the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area where the facility is to be located.

(3) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if a change in the zone maps is required for the area where the facility is to be located.

(4) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if such amendment is required for the area where the facility is to be located.

(5) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq., if such approval is required for the area where the facility is to be located.

(6) The status of any appeal of any zoning determination as described in subdivisions (2) through (5) and, if none is pending, the date by which the appeal must be initiated.

(c) The owner or operator of a chemical waste landfill shall not dredge or fill wetlands, except in compliance with an appropriate permit required by Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). (*Solid Waste Management Board; 329 IAC 4.1-8-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079*)

329 IAC 4.1-8-4 Public notice and public participation

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 4. Each applicant submitting a request for approval for a chemical waste landfill under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.75(c) by reference, shall comply with the public notice and public participation requirements in 329 IAC 10-12-1. (*Solid Waste Management Board; 329 IAC 4.1-8-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079*)

329 IAC 4.1-8-5 Notice of activity

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 5. (a) The owner or operator of a chemical waste landfill shall notify the following at least thirty (30) days before beginning any storage, separation, processing, recovery, treatment, or disposal of waste containing PCBs:

(1) Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

(2) The county health department for the county in which the facility is located.

(3) The emergency management director and the local emergency planning committee for the county in which the facility is located.

(4) The fire department with jurisdiction over the facility.

(b) Upon completion of any separation, processing, recovery, or treatment of PCB waste regulated under this article, the owner or operator of a chemical waste landfill shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either:

(1) PCB disposal notification; or

(2) analytical documentation demonstrating that the PCBs were destroyed.

(*Solid Waste Management Board; 329 IAC 4.1-8-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079*)

Rule 9. Alternative Disposal Facilities

329 IAC 4.1-9-1 Applicability

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. This rule applies to alternative disposal facilities required to be approved under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.60(e) by reference. (*Solid Waste Management Board; 329 IAC 4.1-9-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080*)

329 IAC 4.1-9-2 General

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. (a) The owner or operator of an alternative disposal facility must receive written approval by the commissioner as follows:

(1) For an alternative disposal facility for which construction was started prior to the effective date of this article, written approval must be received from the commissioner before starting operation under this article.

(2) For an alternative disposal facility for which construction is started on or after the effective date of this article, written approval must be received from the commissioner before beginning construction.

(b) The owner or operator of an alternative disposal facility shall provide to the department a copy of the written approval from EPA required by 40 CFR 761.60(e).

(c) The owner or operator of an alternative disposal facility shall comply with the requirements of 329 IAC 4.1-4 through 329 IAC 4.1-6. (*Solid Waste Management Board; 329 IAC 4.1-9-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080*)

329 IAC 4.1-9-3 Location restrictions

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6; IC 36-7-4

Sec. 3. (a) An alternative disposal facility must comply with all zoning and location restrictions of the political subdivision in which the facility is located, if any are imposed.

(b) The owner or operator shall provide documentation that all required zoning and other local approvals, if any are required, have been obtained before written approval is requested under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.60(e) by reference, is requested. Documentation that all required zoning and other local approvals, if any are required, have been obtained may include the following:

(1) A copy of the zoning requirements, if any, for solid waste facilities in the area where the facility is to be located.

(2) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area where the facility is to be located.

(3) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if a change in the zone maps is required for the area where the facility is to be located.

(4) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if such amendment is required for the area where the facility is to be located.

(5) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq., if such approval is required for the area where the facility is to be located.

(6) The status of any appeal of any zoning determination as described in subdivisions (2) through (5) and, if none is pending, the date by which the appeal must be initiated.

(c) The owner or operator of an alternative disposal facility shall not dredge or fill wetlands, except in compliance with an appropriate permit required by Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). (*Solid Waste Management Board; 329 IAC 4.1-9-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080*)

329 IAC 4.1-9-4 Public notice and public participation

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. Each applicant submitting a request for approval of an alternative disposal facility under 329 IAC 4.1-4-1, that incorporates 40 CFR 761.60(e) by reference, shall comply with the public notice and public participation requirements in 329 IAC 10-12-1, as follows:

(1) For an alternative disposal facility for which construction was started prior to the effective date of this article, the owner or operator shall comply with 329 IAC 10-12-1 before beginning storage, separation, processing, recovery, or treatment of PCB waste under this article.

(2) For an alternative disposal facility for which construction is started on or after the effective date of this article, the owner or operator shall comply with 329 IAC 10-12-1 before beginning construction of the facility.

(Solid Waste Management Board; 329 IAC 4.1-9-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)

329 IAC 4.1-9-5 Notice of activity

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 5. (a) The owner or operator of an alternative disposal facility shall notify the following at least thirty (30) days before beginning any storage, separation, processing, recovery, treatment, or disposal of waste containing PCBs:

(1) Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

(2) The county health department for the county in which the facility is located.

(3) The emergency management director and the local emergency planning committee for the county in which the facility is located.

(4) The fire department with jurisdiction over the facility.

(b) Upon completion of any separation, processing, recovery, or treatment of PCB waste regulated under this article, the owner or operator of an alternative disposal facility shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either:

(1) PCB disposal notification; or

(2) analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-9-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)

Rule 10. Mobile Facilities

329 IAC 4.1-10-1 Mobile facilities

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. (a) A mobile facility that operates for one hundred eighty (180) days or less in a single location must comply with the following requirements:

(1) 40 CFR 761, Subpart D, incorporated by reference at 329 IAC 4.1-4-1.

(2) The requirements of 329 IAC 4.1-4 through 329 IAC 4.1-6, except the requirement to obtain approval from the commissioner under this article if the facility has obtained approval from the EPA under 40 CFR 761.60(e).

(b) A mobile facility that operates for more than one hundred eighty (180) days in a single location must comply with the following requirements:

(1) 40 CFR 761, Subpart D, incorporated by reference at 329 IAC 4.1-4-1.

(2) 329 IAC 4.1-4 through 329 IAC 4.1-6.

(3) The mobile facility must comply with one (1) of the following:

(A) 329 IAC 4.1-7 for an incinerator or a high efficiency boiler.

(B) 329 IAC 4.1-8 for a chemical waste landfill.

(C) 329 IAC 4.1-9 for an alternative disposal facility.

(4) The owner or operator of the mobile facility shall comply with the public notice and public participation requirements in 329 IAC 10-12-1 before continuing operations under this article.

(c) The owner or operator of a mobile facility shall do the following:

(1) Provide to the department a copy of the written approval from EPA.

(2) Notify the following at least thirty (30) days before beginning an activity regulated under this article:

(A) Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

(B) The county health department for the county in which the activity takes place.

(C) The emergency management director and the local emergency planning committee for the county in which the

facility is located.

(D) The fire department with jurisdiction over the facility.

(d) Upon completion of an activity regulated under this article, the owner or operator of a mobile facility shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either:

(1) PCB disposal notification; or

(2) analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-10-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3081)

Rule 11. Contingency Plan

329 IAC 4.1-11-1 Incorporation by reference; contingency plan

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 264, Subpart D, consisting of 40 CFR 264.50 through 40 CFR 264.56, is incorporated by reference, except as provided in subsection (d).

(b) 40 CFR 264, Subpart D is available for viewing and copying at the Office of Solid and Hazardous Waste Management, Indiana Government Center-North, Eleventh Floor West, 100 North Senate Avenue, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The telephone number for the Superintendent of Documents is (202) 512-1800.

(d) Delete 40 CFR 264.50. *(Solid Waste Management Board; 329 IAC 4.1-11-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3081)*

329 IAC 4.1-11-2 Contingency plan

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 2. (a) The owner or operator of:

(1) an incinerator or high efficiency boiler;

(2) a chemical waste landfill;

(3) an alternative disposal facility; or

(4) a mobile facility;

shall prepare and maintain a contingency plan in accordance with 40 CFR 264.51 through 40 CFR 264.54.

(b) The contingency plan must:

(1) be designed to minimize hazards to human health and the environment from fires, explosions, or any unplanned sudden or nonsudden release of PCB waste to the air, soil, surface water, or ground water; and

(2) meet the requirements of 40 CFR 264.51 through 40 CFR 264.54.

(c) The person required to prepare a contingency plan shall provide copies of the contingency plan to the:

(1) local emergency planning committee; and

(2) the emergency management director;

for the county in which the facility is located before operation of the facility begins. *(Solid Waste Management Board; 329 IAC 4.1-11-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)*

329 IAC 4.1-11-3 Use of contingency plan

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 3. The owner or operator of a facility described in section 2(a) of this rule shall carry out the provisions of the contingency plan immediately whenever there is a fire, explosion, or release of PCB waste that could threaten human health or the environment. *(Solid Waste Management Board; 329 IAC 4.1-11-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)*

329 IAC 4.1-11-4 Emergency coordinator

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. (a) The owner or operator of a facility described in section 2(a) of this rule shall designate an employee as the emergency coordinator as required in 40 CFR 264.55.

(b) The emergency coordinator shall carry out the duties described in 40 CFR 264.56 that are appropriate for the facility. *(Solid Waste Management Board; 329 IAC 4.1-11-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)*

Rule 12. Financial Assurance

329 IAC 4.1-12-1 General

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. Owners or operators of the following types of facilities shall comply with the financial assurance requirements in 329 IAC 3.1-15:

- (1) An incinerator or high efficiency boiler.
- (2) A chemical waste landfill.
- (3) An alternative disposal facility.

(Solid Waste Management Board; 329 IAC 4.1-12-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)

Rule 13. Disposal of Wastes Containing or Contaminated with PCBs in Solid Waste Land Disposal Facilities Regulated under 329 IAC 10

329 IAC 4.1-13-1 Disposal in MSWLF units or nonmunicipal solid waste landfill units

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) A person who disposes of waste containing or contaminated with PCBs in a MSWLF unit or a nonmunicipal solid waste landfill unit shall comply with all requirements of:

- (1) 40 CFR 761, Subpart D, as incorporated by reference at 329 IAC 4.1-4; and
- (2) 329 IAC 10-8.1.

(b) In addition to the requirements of subsection (a), person who disposes of any waste containing PCBs in a MSWLF unit that does not meet the design requirements of 329 IAC 10-17 or a nonmunicipal solid waste landfill shall:

- (1) obtain written authorization from the commissioner prior to disposal of any quantity of the waste; and
- (2) comply with any conditions in the written authorization by the commissioner.

(c) In addition to the requirements of subsection (a), person who disposes of a waste listed in Table 1 in a MSWLF unit that meets the design requirements of 329 IAC 10-17 shall:

- (1) obtain written authorization from the commissioner prior to disposal of any quantity of the waste; and
- (2) comply with any conditions in the written authorization by the commissioner.

Table 1.

Waste that contains PCBs at a concentration less than 50 ppm PCBs, resulting from a source that had a PCB concentration greater than or equal to 50 ppm PCBs. Items or wastes containing inadvertently generated PCBs.

(d) Instead of following the requirements of subsections (a) through (c) of this section, a person who disposes of a waste that contains PCBs at a concentration of less than fifty (50) parts per million resulting from a source that had a PCB concentration less than fifty (50) parts per million PCBs in a MSWLF unit or a nonmunicipal solid waste landfill unit shall provide a signed letter to

the landfill stating that the PCB concentration in the source was less than fifty (50) parts per million PCBs.

(e) Fluorescent light ballasts containing PCBs that are leaking or no longer intact must be disposed of in accordance with 40 CFR 761.62(a) or 40 CFR 761.62(c).

(f) Nonleaking fluorescent light ballasts containing PCBs must be disposed of as follows:

(1) Dispose of the ballasts only in a MSWLF unit that meets the design requirements of 329 IAC 10-17.

(2) Place the ballasts in a container that meets the packaging requirements in 40 CFR 761.60(b)(2)(iv) as incorporated by reference in 329 IAC 4.1-4.

(3) Fill the interstitial space in the container with absorbent material capable of absorbing all liquid content of the ballasts and capacitors.

(4) Segregate containers of fluorescent light ballasts from organic liquids disposed of in the landfill unit.

(5) Before compacting with heavy equipment, cover containers of fluorescent light ballasts with a layer of:

(A) daily cover material;

(B) alternative daily cover material; or

(C) solid waste;

that is thick enough to prevent crushing of the containers.

(6) Collect leachate from the landfill unit and monitor the leachate for PCBs.

(7) Comply with all applicable requirements of 329 IAC 10-8.1.

(g) Nonleaking fluorescent light ballasts containing PCBs must not be disposed of in a MSWLF unit that does not meet the design requirements of 329 IAC 10-17. (*Solid Waste Management Board; 329 IAC 4.1-13-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082; errata filed Jul 14, 2000, 10:59 a.m.: 23 IR 3091*)

329 IAC 4.1-13-2 Disposal in other solid waste land disposal facilities

Authority: IC 13-20-15-1

Affected: IC 13-20-15-6

Sec. 2. Wastes containing or contaminated with PCBs must not be disposed of in:

(1) a construction/demolition site as defined at 329 IAC 10-2-36; or

(2) a restricted waste site as defined at 329 IAC 10-2-159.

(*Solid Waste Management Board; 329 IAC 4.1-13-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083*)

ARTICLE 5. STATE ENVIRONMENTAL POLICY

Rule 1. Environmental Assessment; Activities of State Agencies

329 IAC 5-1-1 General authority of board

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10-3

Sec. 1. (a) IC 13-1-10-3 authorizes and directs that, to the fullest extent possible, all agencies of the state shall include in every recommendation or report on proposals for legislation and other "major state actions significantly affecting the quality of the human environment," a detailed statement on:

(1) the environmental impact of the proposed action;

(2) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(3) alternatives to the proposed action;

(4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(5) any irreversible and irretrievable commitments of resources which would be involved if the proposed actions should be implemented.

(b) IC 13-1-10-3 further provides that the solid waste management board shall by rule define which actions constitute a "major state action significantly affecting the quality of the human environment". (*Solid Waste Management Board; 329 IAC 5-1-1; filed May 31, 1988, 2:42 pm: 11 IR 3523; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 5-1-2 Purpose of rule

Authority: IC 13-1-10-3; IC 13-7-7
Affected: IC 13-1-10-3

Sec. 2. The purpose of this rule (329 IAC 5-1) is to designate which actions are within the scope of IC 13-1-10-3 and in particular which actions constitute a major state action significantly affecting the quality of the human environment, and to provide an environmental assessment form to assist in that determination. (*Solid Waste Management Board; 329 IAC 5-1-2; filed May 31, 1988, 2:42 pm: 11 IR 3523; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 5-1-3 Applicability of rule; exemptions

Authority: IC 13-1-10-3; IC 13-7-7
Affected: IC 13-1-10

Sec. 3. (a) This rule (329 IAC 5-1) applies to all state agencies.

(b) Each agency of the state shall comply with this rule (329 IAC 5-1) unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

(c) IC 13-1-10-7 provides that the "(P)olicies and goals set forth in IC 13-1-10-7 and this rule (329 IAC 5-1) are supplementary to those set forth in existing authorizations of state agencies." Accordingly, each agency shall interpret the provisions of IC 13-1-10-7 and this rule (329 IAC 5-1) as a supplement to its existing authority and as a mandate to view traditional policies in the light of the chapter's (IC 13-1-10) environmental objectives.

(d) Actions covered include but are not limited to:

- (1) agency legislative proposals;
- (2) new and continuing projects and program activities directly undertaken by the agency or supported in whole or in part through state contracts, grants, subsidies, loans or other forms of funding assistance;
- (3) the making, modification, or establishment of rules.

(e) Actions exempted:

- (1) administrative procurements, e.g. general supplies;
- (2) contracts for consulting services;
- (3) personnel actions;
- (4) repair or maintenance of existing structures or facilities involving no expansion;
- (5) basic data collection, research and experimental management and resource evaluation activities which do not result in a significant disturbance to the environment.

(f) Categorical exemptions:

(1) Minor actions. Each agency may submit to the department of environmental management for approval a list of those actions which it considers to be minor in nature and, therefore, categorically exempted. Only those actions on the lists shall be so exempted.

(2) Emergency actions. Those actions necessitated by a sudden unexpected occurrence which demands immediate action to mitigate loss or damage to life, health, property or essential public services shall be exempted.

(g) Statutory exemptions:

- (1) The issuance of a license or permit by any agency of the state, as exempted by IC 13-1-10-6.
- (2) IC 13-1-10-8 provides "(A)ny state agency that is required by the National Environmental Policy Act (P.L.91-190) to file a federal environmental impact statement shall not be required to file a statement with the state government as provided under sections 3 and 4 (IC 13-1-10-3 and IC 13-1-10-4) of this chapter, unless the action contemplated requires state legislation or state appropriations."

(*Solid Waste Management Board; 329 IAC 5-1-3; filed May 31, 1988, 2:42 pm: 11 IR 3523; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 5-1-4 General considerations for preparing environmental assessment forms

Authority: IC 13-1-10-3; IC 13-7-7
Affected: IC 13-1-10

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Sec. 4. (a) It is not within the scope of this rule (329 IAC 5-1) to identify before the fact which major state agency actions significantly affect the quality of the human environment. The specific determination must be developed for each agency action by preparation of an environmental assessment as set forth in 329 IAC 5-1-5.

(b) In preparing the assessment both primary and secondary consequences of short term and long term duration should be considered by the agency, since many state actions stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities.

(c) The effect of many state decisions about a project or complex of projects may be individually limited but can be cumulatively considerable in affecting the environment.

(d) A proposed action which is likely to be highly controversial from an environmental standpoint should be considered significant justification for preparation of an environmental impact statement. (*Solid Waste Management Board; 329 IAC 5-1-4; filed May 31, 1988, 2:42 pm: 11 IR 3524; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 5-1-5 Environmental assessment form

Authority: IC 13-1-10-3; IC 13-7-7

Affected: IC 13-1-10

Sec. 5. The environmental assessment form:

This form is provided to assist in determining whether a proposed action could have significant adverse effect on the quality of the human environment and thus require an environmental impact statement.

AGENCY _____

ADDRESS _____

ACTION IDENTIFICATION _____

PREDICTED DATES: Commencement _____

Completion _____

PROJECTED COST _____

PREPARING BODY (i.e. Agency, Grantee, Contractor) _____

I. Background Information

1. Give a brief description of the proposed action(s) and describe how your agency is involved in the action.
2. Describe the geographical area or areas which will be affected by the action(s), including distinguishing natural and man-made characteristics and a brief description of the present use of the area or areas.

II. Assessment of Environmental Impact

Answer the following questions by placing a check in the appropriate space, consider both short and long term impact. Wherever "Yes" is checked, indicate on the lines below the question the nature of the effect.

	Short		Long	
	Term		Term	
	Yes	No	Yes	No

1. Could the action(s) adversely affect the use of a recreational area or area of important aesthetic value? ___ ___ ___ ___

2. Are any of the natural or manmade features which may be affected in the area(s) unique, that is, not found in another parts of the state or nation? ___ ___ ___ ___

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3. Could the action(s) adversely affect an historical or archaeological structure or site? ___ ___ ___ ___

4. Could the action(s) adversely affect fish, wildlife, or plant life? ___ ___ ___ ___

5. Have any fish, mammals or plant species on the rare or endangered list been sighted in the affected area(s)? ___ ___ ___ ___

- Will those sighted be adversely affected? ___ ___ ___ ___

6. Could the action(s) change existing features of any of the state's fresh waters or wetlands? ___ ___ ___ ___

7. Could the action(s) change existing features of any of the state's beaches? ___ ___ ___ ___

8. Could the action(s) result in the elimination of significant acreage of land presently utilized for agricultural or forestry purposes? ___ ___ ___ ___

9. Will the action(s) require certification, authorization or issuance of a permit by any local, state or federal environmental control agency? ___ ___ ___ ___

10. Will the action(s) involve the application, use or disposal of potentially hazardous materials? ___ ___ ___ ___

11. Will the action(s) involve construction of facilities in a flood plain? ___ ___ ___ ___

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12. Could the action(s) result in the generation of a significant level of noise? — — — —

13. Could the action(s) result in the generation of significant amounts of dust? — — — —

14. Could the action(s) result in a deleterious effect on the quality of the air? — — — —

15. Could the action(s) result in deleterious effect on the quality or quantity of any portion of the state's water resources? (If yes, indicate whether surface, ground water, offshore.) — — — —

16. Could the action(s) affect an area of important scenic value? — — — —

17. Could the action(s) result in increased congestion and/or traffic in an already congested area or an area incapable of absorbing increase? — — — —

18. Could the action(s) require a variance from or result in a violation of any statute, ordinance, by-law, regulation or standard, the major purpose of which is to prevent or minimize damage to the environment? — — — —

19. Could the action(s) result in any form of adverse environmental impact not included in the above questions? (If yes, identify the impacted resource or area.) — — — —

III. Statement of No Significant Environmental Effects

A "Yes" answer in the "Long Term" column in section II indicates that the action may cause significant environmental impact, and that an EIS will probably be required. If you have answered "Yes" to any of the questions, the effect of which is not clearly beneficial, but still think the action will cause no significant adverse environmental impact indicate your reasons

below.

IV. Conclusions

Place a check in the appropriate box.

1. () It has been determined that the action will not cause a significant adverse environmental impact. No EIS will be prepared.
2. () It has been determined that the action may cause a significant adverse environmental impact. An EIS will be prepared by

_____ (approximate date)

Signature of Preparing Officer _____

Title _____

Address _____

Telephone _____

(Solid Waste Management Board; 329 IAC 5-1-5; filed May 31, 1988, 2:42 pm: 11 IR 3524; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 2. Environmental Impact Statement; Activities of State Agencies

329 IAC 5-2-1 Purpose of rule

Authority: IC 13-7-7

Affected: IC 13-7-16-4

Sec. 1. It is the purpose of this rule (329 IAC 5-2) to outline reporting procedures which will assure environmental quality review of state agency plans or activities which affect or may affect the environment of the state, prior to final adoption or implementation of such plans or activities. *(Solid Waste Management Board; 329 IAC 5-2-1; filed May 31, 1988, 2:42 pm: 11 IR 3526; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 5-2-2 Definitions

Authority: IC 13-7-7

Affected: IC 13-1-12-1; IC 13-7-1; IC 13-7-16-4

Sec. 2. In addition to the definitions contained in IC 13-7-1 and IC 13-1-12-1 the following apply:

“Environmental assessment” means a cursory assessment of the probable environmental effect of a proposed action, determined in accordance with the provisions of 329 IAC 5-1.

“Environmental impact statement” means a detailed report on the environmental impact of a proposed action, listing adverse environmental effects which cannot be avoided should the action be implemented, alternatives to the proposed action, any irreversible and irretrievable commitments of resources which would be involved, the growth-inducing aspects of the proposed action, effects of the proposed action on the use and conservation of energy resources, the rationale for selecting the final proposed action, and other information as further herein specified.

“Plans or activities which may affect the environment” means a major state action significantly affecting the environment as determined by the application of 329 IAC 5-1.

“Report” means an environmental assessment or an environmental assessment followed by an environmental impact statement as further herein defined.

“State agency, department or institution” means any department, board, commission, bureau, or council created by the legislature having statewide jurisdiction, the operation of which is financed from appropriations of the general assembly. Local government units at the town, city, township, or county level are not included. *(Solid Waste Management Board; 329 IAC 5-2-2; filed May 31, 1988, 2:42 pm: 11 IR 3526; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 5-2-3 Environmental assessment; environmental impact statement

Authority: IC 13-1-10-3; IC 13-7-7-1

Affected: IC 13-1-10-3; IC 13-7-16-4

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Sec. 3. (a) Environmental Assessment. As early as possible in the formulation of a proposal for an agency action that is not either a statutory exemption or a categorical exemption approved by the board, an environmental assessment will be prepared by the agency in accordance with 329 IAC 5-1 and submitted to the department of environmental management. If it is found by the agency that the proposed action will significantly affect the environment, an environmental impact statement (EIS) will be prepared by the agency. A finding to the contrary will negate the need for an EIS. In this case, the environmental assessment shall constitute the final report to the department as required pursuant to IC 13-7-16-4.

(b) Environmental Impact Statement:

(1) Purpose—The purpose of an environmental impact statement is to relate environmental considerations to the inception of the planning process, to examine alternative means of achieving the intended purpose of the proposed action, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision-making process in determining the environmental consequences of the proposed action.

(2) Content and format:

(A) Description and Purpose of Proposed Action: This clause should describe the purpose and necessity of the proposed action, as well as any land disturbing activities, the structures contemplated, action phasing, and any other resultant changes to the environment caused either directly or indirectly by the proposed action. A statement should also be made on the relationship of the proposed action to present zoning and land use and also to future land use plans. In addition, the method for minimizing any adverse effects due to construction, or its phasing, should be described.

- (i) Purpose (use) and objective.
- (ii) Structures or other alterations to the natural environment.
- (iii) Number of employees and anticipated visitors.
- (iv) Land disturbing activities.
- (v) Phasing of action.

(B) Listing of Alternatives: This clause should list alternatives as to size, location, etc. “no action” shall be listed as an alternative. Completion of clauses (C) through (K) shall be accomplished for each alternative.

(C) Present Characteristics: This clause should be used to describe the physical characteristics, population, vegetation, and habitation of the area directly affected and the general area surrounding the proposed action. If the area affected is similar to the surrounding area, one description would be sufficient. Most detail should be given to those aspects of the environment most affected by the proposed action. Less detail can be given to the other aspects.

- (i) Area directly affected by proposed acquisitions, development, etc.
 - (AA) Location, size, and dimensions.
 - (BB) Existing development and prior manmade alterations to the natural environment.
 - (CC) Population.
 - (DD) Physical characteristics.
 - (aa) Topography.
 - (bb) Hydrology (including drainage characteristics).
 - (cc) Geology.
 - (dd) Soils.
 - (ee) Landforms.
 - (EE) Natural vegetation.
 - (aa) Types.
 - (bb) Density.
 - (cc) Use.
 - (FF) Wildlife/aquatic life.
 - (aa) Types.
 - (bb) Density.
 - (GG) Other attributes.
 - (aa) Historical areas.
 - (bb) Geological formations.
 - (cc) Archeological sites.
 - (dd) Other.

- (ii) Area surrounding proposed site of action.
- (AA) Existing development and prior man-made alterations to the natural environment.
- (BB) Physical characteristics.
- (CC) Population.
- (DD) Natural vegetation.
- (EE) Wildlife/aquatic life.
- (FF) Other attributes.

(D) Growth Inducement Aspects: This clause should describe the potentiality and probability of the proposed action to induce or reduce growth in the area which might not otherwise occur, both short and long-term. The impact of these aspects should be included in clause (E).

(E) Impact of Proposed Action on Human and Natural Environment: In this clause, all effects that the action may have on both the human and natural environment should be described. It should be indicated whether the effects will be local, regional, or statewide in nature. List separately the effects caused by the proposed action alone and the effects caused by the growth inducement aspects of the proposed action. Effects should be quantified wherever possible and compared with existing conditions and applicable standards.

- (i) Effect on human population.
 - (AA) Physical.
 - (aa) Noise.
 - (bb) Visual.
 - (1) Changes to natural environment.
 - (2) Proposed structures.
 - (cc) Air pollution.
 - (dd) Water pollution.
 - (1) Surface water.
 - (2) Ground water.
- (BB) Social.
 - (aa) Displacement.
 - (bb) Disruption of community and/or neighborhood.
- (ii) Effect on natural environment.
 - (AA) Land form and/or water bodies.
 - (aa) Erosion.
 - (bb) Drainage.
 - (BB) Natural vegetation.
 - (CC) Wildlife/aquatic life habitats.
 - (DD) Cultural facilities.
 - (aa) Historical sites.
 - (bb) Archaeological sites.
 - (cc) Recreational sites or opportunities.
 - (dd) Scenic qualities.

(F) Adverse Effects Which Cannot be Avoided: This clause should specifically identify those effects listed in clause (E) which may be adverse to the human and natural environment and cannot be avoided. These are distinguished from adverse effects which can be avoided by utilizing certain construction or other techniques.

(G) Measures Proposed to Mitigate Adverse Effects of the Action: This clause is intended to describe the measures to be taken to mitigate adverse effects identified under clause (E) and not listed under clause (F). The description should include an evaluation as to the reduction of the adverse effects or the increase in beneficial effects. Environmentally enhanced features should be balanced against detrimental effects of the project.

- (i) Human displacement.
 - (AA) Relocation assistance programs.
 - (BB) Other.
- (ii) Disruption of community and/or neighborhood.
 - (AA) Access ways.

- (BB) Other.
- (iii) Noise.
- (AA) Hours of operation.
- (BB) Relationship to ambient noise level.
- (CC) Special remedial measures, e.g., berms.
- (iv) Visual.
- (AA) Grading criteria.
- (BB) Landscaping.
- (CC) Architectural integration with site and surroundings.
- (v) Air pollution.
- (AA) Odor.
- (BB) Dust.
- (CC) Other air contaminants.
- (vi) Impact on cultural facilities.
- (AA) Replacement.
- (BB) Relocation.
- (vii) Natural vegetation.
- (AA) Protection and retention of existing vegetation.
- (BB) Replanting.
- (viii) Wildlife/aquatic life habitats.

(H) Relationship Between Local Short-term Uses of Man's Environment and the Maintenance and Enhancement of Long-term Productivity: This clause requires an assessment of the proposed action for short-term and long-term effects. A determination should be made whether the present benefits will exist for future generations.

(I) Irreversible and Irrecoverable Commitment of Resources: This clause should describe those irreversible losses of resources (prime farm land, mineral resources, timber, water, etc.) which will result if the proposed action is implemented.

(J) Effect on the Use and Conservation of Energy Resources. This clause should include a discussion of the impact, if any, of the proposed action on increasing the existing rate of consumption or decreasing production of energy.

(K) Comparison of Alternatives: Compare the cost and environmental impact, short and long-term effects, irreversible and irretrievable commitment of resources, and effects on use and energy conservation, etc., for each alternative. Use tables for comparison, if possible.

(3) Solicitation of Comments from the Public and Public Agencies: The draft statement shall be circulated to local, state, and federal agencies and to the general public deemed by the agency to have an interest in the proposed action for comment in accordance with agency procedures. At least thirty (30) days shall be allowed for submission of comments. At this stage, the document can be in draft form, prior to agency selection of the best alternative or final proposed action.

(4) Public Hearing: After receipt of comments from the above, the agency shall determine by vote of the governing body whether or not to conduct a public hearing on the environmental impact of the proposed action. As a basis for determination, the agency should consider:

- (A) the seriousness of the adverse environmental impacts apparent at the time;
- (B) whether or not the proposed action is known or has the potential to be controversial; and
- (C) whether or not significant requests for a public hearing have been filed.

If the agency decides to conduct a public hearing, it shall be conducted for the purpose of explaining the environmental impacts, their significance, alternatives available, and mitigating measures which can be taken.

(5) Summary of and Response to Comments from the Public and Public Agencies. A summary of the comments from each commentor, followed by the agency response, and the attachment of the actual comments shall be included in the final statement. If a public hearing was not held, the reasons shall be stated. If a public hearing was held, the date, time, place, and attendance shall be stated.

(6) Evaluation of Alternatives. The alternatives listed in the draft statement, plus any prompted by comments from the public and public agencies, shall be evaluated according to the impact of each on the human and natural environment, utilizing the categories listed in clause (E). Each alternative should also be evaluated from the standpoint of irreversible and irretrievable commitment of natural and energy resources.

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(7) Selection of Best Alternative. The best alternative shall be selected in accordance with the provisions of IC 13-1-10-2(b). The rationale used for selecting the best alternative and rejecting the others shall be included.

(8) Submission of Statement to the Department. After selection of the best alternative, the agency may preliminarily adopt said alternative as its intended course of action. The environmental impact statement shall then be submitted to the department. The department shall review the statement from the standpoint of meeting the requirements of this rule (329 IAC 5-2) and shall act within sixty (60) days to accept the statement as submitted, accept with recommendations, or return the statement for revision.

(9) An Alternate Content and Format: When an EIS is to be prepared on the proposed adoption, revision or rescission of a law, regulation, policy, standard, or planning document, the following alternative format to that set out in section (2) may be used.

(A) Description and Purpose of Proposed Action: This clause should describe the purpose and necessity of the proposed action. Included should be any legislative or other legal requirement mandating the proposed action. If the proposed action revises or rescinds an existing law, regulation, policy, standard or planning document, or portion thereof, the magnitude and impact of the revision or rescission should be explained.

(i) Purpose

(ii) Objective

(B) Growth Inducement Aspects: This clause should describe the potentiality and probability of the proposed action to induce or reduce growth which might not otherwise occur, both short and long term. The impact of these aspects should be included in clause (2)(E).

(D) Impact of Proposed Action of Human and Natural Environment: Explain the impact of the proposed action on the following:

Human Health

Water Quality

Air Quality

Land

Noise

Traffic

Natural Vegetation

Wildlife

Scenic Qualities

Historical Sites

Archaeological Sites

Recreational Sites or Opportunities

Population Displacement

Disruption of Community or Neighborhood

(F) Adverse Effects which Cannot be Avoided: List any adverse impacts which are identified under clause (2)(E).

(G) Measures which are available to mitigate any adverse effects identified under clause (2)(E) and not listed under clause (2)(F).

(H) Relationship Between Local Short-term uses of Man's Environment and the Maintenance and Enhancement of Long-term Productivity: Same as clause (2)(H).

(I) Irreversible and Irrecoverable Commitment or Resources: Same as clause (2)(I).

(J) Effect On the Use and Conservation of Energy Resources: Same as (2)(J).

(K) Comparison of Alternatives: Not Applicable.

The remainder of the format shall be the same as the standard format, except that clauses (6) and (7) shall not be considered applicable.

(Solid Waste Management Board; 329 IAC 5-2-3; filed May 31, 1988, 2:42 pm: 11 IR 3526; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

ARTICLE 6. PUBLIC RECORDS (REPEALED)

(Repealed by Solid Waste Management Board; filed Nov 4, 1999, 10:19 a.m.: 23 IR 563)

ARTICLE 6.1. PUBLIC RECORDS; CONFIDENTIAL INFORMATION; CONFIDENTIALITY AGREEMENTS

Rule 1. Purpose and Applicability

329 IAC 6.1-1-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 5-14-3; IC 13-14-11-5

Sec. 1. The purpose of this article is to provide the following:

- (1) The policy of the solid waste management board, to be followed by the department, in making public records available for public review and copying in accordance with IC 5-14-3 unless the information is determined to be confidential.
- (2) The provisions for protecting legitimate interests in the confidentiality of certain information.
- (3) The criteria to be used for determining the legitimacy of confidentiality claims in accordance with IC 5-14-3.
- (4) The procedures that the commissioner shall use in making determinations on the confidentiality of information.
- (5) The form of confidentiality agreements required by IC 13-14-11-5 from employees of the department and from persons under contract to the department.

(Solid Waste Management Board; 329 IAC 6.1-1-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 6.1-1-2 Applicability

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 13-14-11

Sec. 2. This article applies to the following:

- (1) Information received on or after the effective date of this article from a person requesting confidential treatment of that information. The information may be either:
 - (A) treated as a single unit of information even if the information is comprised of a collection of individual items of information; or
 - (B) separated into two (2) or more categories to afford different treatment to the information in each category because the claim covers only a portion of the information.
- (2) Employees of the department and contractors who:
 - (A) make the confidentiality determination;
 - (B) handle the confidential information; or
 - (C) maintain the file of confidential information.

(Solid Waste Management Board; 329 IAC 6.1-1-2; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 2. Definitions

329 IAC 6.1-2-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 13-11-2

Sec. 1. The definitions in this rule apply throughout this article. *(Solid Waste Management Board; 329 IAC 6.1-2-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 6.1-2-2 "Available to the public" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 5-14-3

Sec. 2. "Available to the public" means a public record, as defined by IC 5-14-3, but excluding public records described in 329 IAC 6.1-3-1(b), that the department shall furnish to any member of the public upon request, or may otherwise make public. (*Solid Waste Management Board; 329 IAC 6.1-2-2; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-2-3 "Board" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-11-2-17

Sec. 3. "Board" means the solid waste management board. (*Solid Waste Management Board; 329 IAC 6.1-2-3; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-2-4 "Claim of confidentiality" or "claim" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 5-14-3-4; IC 13-14-11

Sec. 4. "Claim of confidentiality" or "claim" means a claim or assertion that information be treated as confidential because the information is excepted from disclosure under IC 5-14-3-4(a) or IC 5-14-3-4(b). (*Solid Waste Management Board; 329 IAC 6.1-2-4; filed Nov 4, 1999, 10:19 a.m.: 23 IR 557; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-2-5 "Commissioner" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-11-2-35

Sec. 5. "Commissioner" means the commissioner of the department. (*Solid Waste Management Board; 329 IAC 6.1-2-5; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-2-6 "Contractor" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-14-11

Sec. 6. "Contractor" means:

(1) any:

- (A) person;
- (B) association;
- (C) partnership;
- (D) corporation;
- (E) business;
- (F) educational institution;
- (G) governmental body; or
- (H) other entity;

performing work under contract as an authorized representative of the department; and

(2) includes a subcontractor of the contractor and employees or officers of the contractor and subcontractor, which have been authorized by the department through the contract to have access to confidential information.

(*Solid Waste Management Board; 329 IAC 6.1-2-6; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-2-7 "Department" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-11-2-51

Sec. 7. "Department" means the department of environmental management. *(Solid Waste Management Board; 329 IAC 6.1-2-7; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 6.1-2-8 "Information" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 5-14-3; IC 13-14-11

Sec. 8. "Information" means any of the following, regardless of physical form or characteristics, without limitation:

- (1) Written or printed material.
- (2) Data processing card decks, printouts, and tapes.
- (3) Maps.
- (4) Charts.
- (5) Paintings.
- (6) Photographs.
- (7) Drawings.
- (8) Engravings.
- (9) Sketches.
- (10) Samples.
- (11) Working notes and papers.
- (12) Reproductions of such things by any means or process.
- (13) Sound, voice, or electronic recordings in any form, in the possession of the department by which knowledge has been preserved and may be retrieved.
- (14) Any other material.

(Solid Waste Management Board; 329 IAC 6.1-2-8; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 6.1-2-9 "Person" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-11-2-158

Sec. 9. "Person" has the meaning set forth in IC 13-11-2-158(a). *(Solid Waste Management Board; 329 IAC 6.1-2-9; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 6.1-2-10 "Public record" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 5-14-3-2

Sec. 10. "Public record" has the meaning set forth in IC 5-14-3-2. *(Solid Waste Management Board; 329 IAC 6.1-2-10; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 6.1-2-11 "Trade secret" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 24-2-3-2

Sec. 11. "Trade secret" has the meaning set forth in IC 24-2-3-2. *(Solid Waste Management Board; 329 IAC 6.1-2-11; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 3. Access to Public Records

329 IAC 6.1-3-1 Access to public records

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 5-14-3-4; IC 5-14-3-8; IC 13-14-11

Sec. 1. (a) The provisions of IC 5-14-3 apply to all public records. All information received by the department is considered a public record.

(b) Public records are available to the public, except for any of the following public records:

- (1) Received under or supporting a claim of confidentiality.
- (2) Under review or appeal to determine if confidential under IC 5-14-3-4(a) or IC 5-14-3-4(b).
- (3) The commissioner has determined to be confidential under IC 5-14-3-4(a) or IC 5-14-3-4(b).

(c) Public records that are available to the public may be copied by the department upon payment of a fee provided for in IC 5-14-3-8. The fee shall be paid to the cashier's office at the department. (*Solid Waste Management Board; 329 IAC 6.1-3-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 558; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 4. Confidentiality Claims

329 IAC 6.1-4-1 Confidentiality claims

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 5-14-3-4; IC 13-14-11-3; IC 24-2-3-2

Sec. 1. (a) A person submitting information to the department for which confidential treatment is requested shall make a written claim of confidentiality under subsections (c) and (d) at the time of submittal of the information.

(b) A person may request confidential treatment of information at the time the information is acquired through the actions of the department, such as inspections. The written claim for confidential treatment may be broad, but must be sufficiently clear to allow for accurate identification of the information claimed to be confidential. The supporting information required under subsection (d) must be submitted to the commissioner within five (5) working days from the time the information claimed as confidential is acquired by the department.

(c) A person submitting a claim of confidentiality shall designate and segregate the information and the supporting information to which the claim applies in a manner that is sufficiently clear to allow the department to identify all confidential claim materials. One (1) of the following methods shall be used to indicate that the information and any of the supporting information under subsection (d) is claimed as confidential:

- (1) Attaching a cover sheet instructing which information is to be treated as confidential.
- (2) Marking each page or item of information as:
 - (A) confidential;
 - (B) confidential claim material;
 - (C) trade secrets; or
 - (D) confidential business information.

(d) The person submitting the claim shall provide supporting information to show that the information claimed as confidential is entitled to confidential treatment under IC 5-14-3, including the following:

- (1) State that the information is a specific type of confidential information under IC 5-14-3-4(a) and IC 13-14-11-3(a)(1) or IC 5-14-3-4(b) and IC 13-14-11-3(a)(2). If the information is confidential under IC 5-14-3-4(a)(4), the person submitting the claim shall provide a narrative statement or documents supporting the claim that the information meets the necessary elements of a trade secret as defined at IC 24-2-3-2.
- (2) State whether the information has previously been determined to be confidential by the commissioner.
- (3) Indicate the portion of the supporting information claimed as confidential as specified in subsection (c).
- (4) Specify the period of time for which confidentiality is requested if the period is to be other than seventy-five (75) years as provided in IC 5-14-3-4(e).
- (5) Whenever the claim is based on the commissioner's discretionary power to grant confidential status to information under IC 5-14-3-4(b) and IC 13-14-11-3(a)(2), state all of the following:
 - (A) The statute, rule, permit, or other authority that requires the submission of such information.
 - (B) Facts demonstrating that the information may be treated as confidential under IC 5-14-3-4(b).

(e) The information and supporting information claimed as confidential shall be treated as confidential until the commissioner makes a determination under 329 IAC 6.1-5. (*Solid Waste Management Board; 329 IAC 6.1-4-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 559; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 5. Determinations on Claim of Confidentiality

329 IAC 6.1-5-1 Determinations

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 4-21.5; IC 5-14-3; IC 13-14-11

Sec. 1. The commissioner shall make a determination on a claim of confidentiality submitted after the effective date of this article in accordance with this article. The determination shall be made in accordance with IC 5-14-3-4 and IC 13-14-11. (*Solid Waste Management Board; 329 IAC 6.1-5-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 559; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-5-2 Request for additional supporting information

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 4-21.5-3-1; IC 13-14-11

Sec. 2. (a) The commissioner may request additional supporting information regarding a claim of confidentiality. Any additional supporting information claimed as confidential shall be treated as confidential until the commissioner makes a determination as required by section 1 of this rule.

(b) If the commissioner intends to make a determination to deny a claim of confidentiality, the commissioner shall notify the person in writing by certified mail, with return receipt requested, stating the following:

(1) Additional supporting information shall be submitted in accordance with 329 IAC 6.1-4-1(c).

(2) The person has fifteen (15) days from the date of receipt of the notice to respond.

(3) A submission shall be completed in the time frames and by the methods specified by IC 4-21.5-3-1(f). The person shall notify the department by telephone or facsimile within the fifteen (15) day period under subdivision (2) that additional supporting information has been mailed or deposited with a private carrier.

(4) Failure to submit any additional supporting information within fifteen (15) days under subdivision (2) or within the time allowed under subsection (d) to provide additional information in support of the claim shall result in a determination based on the information and any supporting information already received.

(5) Any additional supporting information claimed as confidential shall be treated as confidential until the commissioner makes a determination as required by section 1 of this rule.

(c) The commissioner shall make a determination after receipt of the additional supporting information submitted under subsection (b). The commissioner shall notify the person under subsection (b) of the intent to deny a claim of confidentiality only once before making a determination under section 3 or 4 of this rule. If the person fails to submit additional supporting information in accordance with subsection (b), the commissioner shall make a determination based on the information and any supporting information already received.

(d) The commissioner may approve an extension of time for submitting additional supporting information if the person makes a request in writing within the fifteen (15) days allowed in subsection (b)(2) and (b)(3). The extension shall not exceed fifteen (15) days. (*Solid Waste Management Board; 329 IAC 6.1-5-2; filed Nov 4, 1999, 10:19 a.m.: 23 IR 559; errata filed Dec 6, 1999, 9:44 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 6.1-5-3 Approval determination

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 4-21.5; IC 13-14-11

Sec. 3. (a) If the commissioner determines that the information shall be held confidential for the full period requested by the person who made the claim under 329 IAC 6.1-4-1(d), the commissioner shall do all of the following:

(1) Notify the person in writing of the determination.

(2) Maintain the information as confidential for the period requested under 329 IAC 6.1-4-1(d) unless ordered by a court of competent jurisdiction to permit access to the information for inspection and copying.

(b) If the commissioner determines that the information is confidential but the period of confidential treatment shall be shorter than that requested by the person under 329 IAC 6.1-4-1(d), the commissioner shall notify the person in writing by certified mail, with return receipt requested, stating the following:

(1) The basis for the determination.

(2) The period of time of confidentiality, after which the information will be available to the public.

(3) The right to appeal the commissioner's determination.

(4) The procedure for appealing the commissioner's determination, including the time period provided by IC 4-21.5.

(Solid Waste Management Board; 329 IAC 6.1-5-3; filed Nov 4, 1999, 10:19 a.m.: 23 IR 560; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 6.1-5-4 Denial of claim

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 4-21.5; IC 13-14-11

Sec. 4. If the commissioner determines that the information is not confidential based on 329 IAC 6.1-4, the commissioner shall notify the person who submitted the claim of such determination. The notification shall be in writing, sent certified mail, with return receipt requested, and must state the following:

(1) The basis for the determination.

(2) Notice that the person may appeal the commissioner's determination.

(3) The procedure for appealing the commissioner's determination, including the time period provided by IC 4-21.5.

(4) Notice that, if the determination is timely appealed, the information shall be treated as confidential until the petition for review is denied or the commissioner is ordered not to treat the information as confidential.

(5) Notice that, unless the person timely appeals the determination, the information shall become available to the public.

(Solid Waste Management Board; 329 IAC 6.1-5-4; filed Nov 4, 1999, 10:19 a.m.: 23 IR 560; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 6.1-5-5 Modification of determinations

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 5-14-3; IC 13-14-11

Sec. 5. (a) The commissioner's determination that information is confidential shall continue in effect for the period of time specified in the determination under section 3 of this rule unless the commissioner issues a revised determination stating that the determination under section 1 of this rule no longer accurately describes the information's confidentiality due to any of the following:

(1) Change in applicable law.

(2) Newly-discovered or changed facts.

(3) A clearly erroneous previous determination.

(b) If the commissioner concludes that such a determination under section 1 of this rule is of questionable validity, the commissioner shall do the following:

(1) Inform the person in writing by certified mail, with return receipt requested.

(2) Afford the person an opportunity to furnish additional information on pertinent issues on the matter in accordance with section 2(b) and 2(d) of this rule.

(c) After consideration of any information timely submitted under subsection (b)(2), the commissioner may make any of the following determinations:

(1) The information is not confidential.

(2) The period of entitlement to treatment as confidential information shall end at an earlier date than determined under section 1 of this rule.

(d) After the determination provided for by subsection (c) is made, the commissioner shall notify the person in writing by certified mail, with return receipt requested, stating one (1) of the following:

(1) That the claim of confidentiality has been approved as provided for in section 3 of this rule.

(2) That the claim of confidentiality has been denied as provided for in section 4 of this rule.

(Solid Waste Management Board; 329 IAC 6.1-5-5; filed Nov 4, 1999, 10:19 a.m.: 23 IR 560; errata filed Dec 6, 1999, 9:44 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 6. Appeals

329 IAC 6.1-6-1 Administrative appeal

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 4-21.5-3

Sec. 1. An appeal of a determination shall be:

(1) in accordance with IC 4-21.5-3 and rules of the office of environmental adjudication; and

(2) made by filing a written petition for review with the office of environmental adjudication in accordance with IC 4-21.5-3.

A copy of the petition shall be served on the commissioner concurrent with such filing. *(Solid Waste Management Board; 329 IAC 6.1-6-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 561; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 6.1-6-2 Judicial review

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 4-21.5-5

Sec. 2. Judicial review of a final order of the environmental law judge shall be in accordance with IC 4-21.5-5. *(Solid Waste Management Board; 329 IAC 6.1-6-2; filed Nov 4, 1999, 10:19 a.m.: 23 IR 561; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 7. Authorized Disclosure of Confidential Information

329 IAC 6.1-7-1 Authorized disclosure of confidential information

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 13-14-11-6

Sec. 1. Confidential information may be disclosed by the department only in accordance with IC 13-14-11-6. *(Solid Waste Management Board; 329 IAC 6.1-7-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 561; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 8. Wrongful Disclosure Penalties

329 IAC 6.1-8-1 Wrongful disclosure penalties

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 4-15; IC 5-14-3-3; IC 5-14-3-10; IC 13-14-11; IC 35-50-3-2

Sec. 1. Penalties for wrongful disclosure of confidential information are contained in IC 5-14-3-10. *(Solid Waste Management Board; 329 IAC 6.1-8-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 561; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 9. Confidentiality Agreements

329 IAC 6.1-9-1 Confidentiality agreements

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3

Affected: IC 5-14-3-10; IC 13-14-11-5

SOLID WASTE MANAGEMENT BOARD

Sec. 1. (a) Persons employed, contracted, or subcontracted by the department, prior to accessing or being granted access to confidential information, must execute a confidentiality agreement enforceable by:

- (1) the state; and
 - (2) the submitter of the information.
- (b) The following is the confidentiality agreement form for state employees:

CONFIDENTIALITY AGREEMENT
FOR STATE EMPLOYEES

I understand that I will have access to certain confidential information submitted to the Indiana Department of Environmental Management pursuant to state or federal statute or rule. This access has been granted in accordance with my official duties as an employee of the state of Indiana.

I understand that confidential information may not be disclosed except as authorized by rules of the board as contained in 329 IAC 6.1. My obligation not to disclose such confidential information includes disclosure to any other employee, officer, or authorized representative of the state or of the United States unless such employee, officer, or authorized representative is concerned with carrying out or implementing IC 13 or when the information is relevant in any proceeding related to enforcement.

I understand that, under Indiana statute IC 5-14-3-10, I am liable for a possible fine of up to five thousand dollars (\$5,000) or imprisonment for up to one (1) year, or both, if I knowingly or intentionally disclose confidential information to any person not authorized to receive it.

I understand that I may be subject to disciplinary action for violation of this agreement with penalties up to and including dismissal.

I understand that this agreement is enforceable by the state of Indiana and by the person who submits confidential information.

I agree that I will treat any confidential information furnished to me as confidential as established by the department.

(Signature) _____

Name (Typed)

_____ Date

(c) The following is the confidentiality agreement form for employees or officers of contractors:

CONFIDENTIALITY AGREEMENT
FOR CONTRACTED EMPLOYEE OR OFFICER

I understand that as an employee or officer of _____, a contractor performing work for the Indiana Department of Environmental Management, I will have access to certain confidential information. This access has been granted to me in order that I can perform my work under the contract.

I understand that such confidential information may not be disclosed by me, except as authorized by a state or federal statute or rule. My obligation not to disclose such confidential information includes disclosure to any employee of the Indiana Department of Environmental Management, any employee or officer of any contractor, or any subcontractor unless such employee or officer has executed a confidentiality agreement.

I understand that, under Indiana statute IC 5-14-3-10, I am liable for a possible fine of up to five thousand dollars (\$5,000) or imprisonment for up to one (1) year, or both, if I knowingly or intentionally disclose confidential information to any person not authorized to receive it. In addition, I understand that I may be subject to disciplinary action for violation of this agreement up to and including dismissal.

I understand that this agreement is enforceable by the state of Indiana and by the person who submits confidential information.

I agree that I will treat any confidential information furnished to me as confidential as established by the department.

(Signature) _____

Name (Typed)

_____ Date

(Solid Waste Management Board; 329 IAC 6.1-9-1; filed Nov 4, 1999, 10:19 a.m.: 23 IR 561; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

ARTICLE 7. INDIANA SCORING MODEL

Rule 1. General Provisions; Definitions

329 IAC 7-1-1 Applicability and scope

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. (a) This article applies to hazardous substance response sites not on the National Priorities List (40 C.F.R. 300, Appendix B (1987 Edition)) for which action by the commissioner may be required to:

- (1) prevent the release of a hazardous substance or contaminant;
- (2) control, contain, isolate, neutralize, remove, store, or dispose of any hazardous substance or contaminant already released into or on the air, land, or waters of this state; or
- (3) provide another appropriate response.

(b) Nothing in this article shall be construed to limit the authority of the commissioner to respond to the release or threatened release of a hazardous substance or other contaminant or to take any other action provided for by statute or rule relating to the release or threatened release of a hazardous substance or other contaminant. (*Solid Waste Management Board; 329 IAC 7-1-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 9; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-2 Purpose

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. This article sets forth criteria and procedures for establishing a priority ranking by the commissioner of hazardous substance response sites in order that those sites believed to pose the most significant threat to human health or environment are scheduled first for response and for allocation of department resources. (*Solid Waste Management Board; 329 IAC 7-1-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-3 Definitions

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
Affected: IC 13-7-1; IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 3. In addition to the definitions contained in IC 13-7-1 and IC 13-7-5-3, the definitions in this rule shall apply throughout this article. (*Solid Waste Management Board; 329 IAC 7-1-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-3.1 General provisions; “deletion” defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 3.1. “Deletion” means removal from the commissioner's bulletin by agency or petition deletion. (*Solid Waste Management Board; 329 IAC 7-1-3.1; filed Oct 28, 1998, 3:26 p.m.: 22 IR 752; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-4 “Hazardous substance response site” defined

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
Affected: IC 13-7-1; IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 4. “Hazardous substance response site” or “site” means the location of a release or threat of release of hazardous substances or contaminants. (*Solid Waste Management Board; 329 IAC 7-1-4; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-5 “Inordinate cost” defined

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
Affected: IC 13-7-1-3; IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 5. "Inordinate cost" means costs at a site which are clearly beyond the scope of the hazardous substances response trust fund. (*Solid Waste Management Board; 329 IAC 7-1-5; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-6 "Lack of technology" defined

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-1; IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 6. "Lack of technology" means:

(1) conditions at a site such that, in the judgment of the commissioner, an acceptable and affordable technology does not exist to contain or dispose of a contaminant that is released or threatened to be released at the site; or

(2) a facility does not exist that is permitted to properly and safely dispose of the contaminant.

(*Solid Waste Management Board; 329 IAC 7-1-6; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-1-7 Incorporation by reference

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 7. (a) For purposes of this article, the board incorporates herein by reference 40 C.F.R. 300 (1987 Edition), National Oil and Hazardous Substance Pollution Contingency Plan (hereinafter "National Contingency Plan").

(b) Copies of the Code of Federal Regulations (C.F.R.) can be obtained from the Government Printing Office, Washington, D.C. 20402. (*Solid Waste Management Board; 329 IAC 7-1-7; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 2. Assessment of Hazardous Substance Response Sites

329 IAC 7-2-1 Scoring

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 4-21.5; IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. (a) The department shall utilize an objective method to assess, on the basis of available information, relative potential threat to human health or the environment from hazardous substances response sites. The method used to assess hazardous substance response sites will be called the Indiana Scoring Model (ISM) and is set out in 329 IAC 7-3 through 329 IAC 7-10.

(b) Hazardous substance response sites that are evaluated under the ISM shall be assigned a numerical score. Sufficient information will not be available for most sites to indicate the absolute threat a site poses; therefore, this score will be used as a management tool to assist the commissioner in selecting sites for response.

(c) The ISM is based upon the U.S. EPA Hazard Ranking System as published in 40 C.F.R. 300, Appendix A (1987 Edition), but has been modified to take into consideration additional factors.

(d) The score obtained through the utilization of the ISM is not an order or determination of the commissioner for the purpose of notice or review pursuant to the Administrative Adjudication Act (IC 4-21.5). Rather, the score is intended to be only one (1) of several factors to be considered by the commissioner in the allocation of department resources. (*Solid Waste Management Board; 329 IAC 7-2-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-2-2 Rescoring sites

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. (a) The scoring of sites utilizing the ISM will be a dynamic process and scores may be subject to change based upon significant changes in site circumstances, receipt of additional information, or other relevant factors. However, the partial implementation of remedial action at sites selected for such action will not be considered alone as a circumstance requiring a

reevaluation of the site score.

(b) Factors which may result in the rescoring of a site include:

(1) any action taken which is verifiable by the department and consistent with the ultimate remedial action appropriate for the site and which significantly controls or reduces the source of the release or threat of release;

(2) completion of action at a site as determined by the commissioner; or

(3) receipt of information concerning the actual or imminent release of hazardous substances or contaminants previously believed to be contained or controlled.

(c) Actions taken at the site merely to abate the risk and which do not control, reduce, or eliminate the source of the hazardous substance or contaminant being released or threatened to be released will not be considered alone as a basis for rescoring the site.

(d) Because of the large volume of sites to be scored, score review and rescoring will occur during the site selection process unless the commissioner determines otherwise. (*Solid Waste Management Board; 329 IAC 7-2-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 11; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-2-3 Assessment of hazardous substance response sites; publication of list of scored sites

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7

Affected: IC 13-22-2

Sec. 3. (a) The commissioner shall annually publish, in the policy, nonrule section of the Indiana Register, the names of the sites that have been scored utilizing the ISM, with the most recent available score assigned to each site.

(b) The publication shall also inform the public of the location of the information upon which the score for each site is based and how that information may be reviewed or obtained. An introduction to the publication will give an explanation of the general meaning of the composite of scores.

(c) A copy of the publication with the most recent available scores will be mailed to the county health officer and, as applicable, to the county commissioners and town boards or mayors.

(d) Notice of all newly scored sites shall be semiannually mailed to the officials identified in subsection (c).

(e) The publication referred to in this subsection is entitled the commissioner's bulletin. The bulletin is published annually in the nonrule policy document section of the Indiana Register. (*Solid Waste Management Board; 329 IAC 7-2-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 11; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-2-4 Selection of sites

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 4. (a) The commissioner shall use the ISM score and additional factors as a basis for prioritizing sites for remedial action. These factors include:

(1) the department's ability to respond effectively with available resources; and

(2) demonstrable limitations in model assumptions.

(b) The commissioner's first priority in selection of sites for remedial action shall be to address all sites which score equal to or greater than ten (10) according to the ISM, unless a site can be shown to pose significant threat not reflected by the score.

(c) The commissioner may determine that remedial action is not feasible or practicable at a site because of inordinate cost, a lack of technology, or other pertinent factors, regardless of the ISM score assigned to the site. If remedial action is deemed infeasible or impracticable at a site, the commissioner nonetheless may order or undertake appropriate removal action at the site pursuant to section 5 of this rule.

(d) Those sites viewed as a lower priority or scoring below ten (10) shall be selected as resources allow.

(e) The commissioner may bypass remedial action at hazardous substance response sites that the department is scoring for the National Priorities List or sites that have been scored but are awaiting the next federal nomination for the National Priorities List.

(f) Nothing in this article should be construed to require the commissioner to address sites in rank order according to score. (*Solid Waste Management Board; 329 IAC 7-2-4; filed Sep 6, 1989, 1:00 p.m.: 13 IR 11; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SOLID WASTE MANAGEMENT BOARD

329 IAC 7-2-5 Removal

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 5. Irrespective of whether a hazardous substance response site has been scored under the Indiana Scoring Model the commissioner may at any time undertake or order removal action at any hazardous substance response site if such action is consistent with the National Contingency Plan. (*Solid Waste Management Board; 329 IAC 7-2-5; filed Sep 6, 1989, 1:00 p.m.: 13 IR 12; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-2-6 Assessment of hazardous substance response sites

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
 Affected: IC 13-22-2

Sec. 6. A site may be deleted from the commissioner’s bulletin through an agency or petition deletion procedure if the site complies with one (1) of the following:

- (1) Received a score of ten (10) or less.
- (2) A comprehensive site clean-up has been completed so that the site is no longer a significant threat to human health and the environment and one (1) of the following has been issued concerning the site:
 - (A) A letter from the department’s leaking underground storage tank section that states no further action is necessary.
 - (B) A letter of determination from the department or the United States Environmental Protection Agency that states no further action is necessary for releases of hazardous wastes or hazardous constituents following investigation and remediation performed under the Resource Conservation and Recovery Act.
 - (C) A certificate of completion and a covenant not to sue from the department’s voluntary remediation program section.
 - (D) A record of decision or declaration of closure from the department’s state clean-up program section that states no further action is necessary.
 - (E) Designation in the United States Environmental Protection Agency’s Comprehensive Environmental Response, Compensation, and Liability Act data base of “No Further Remedial Action Planned Priority Assessment”.

(*Solid Waste Management Board; 329 IAC 7-2-6; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 16, 2001, 4:40 p.m.: 25 IR 1124*)

Rule 3. Indiana Scoring Model (ISM); Methodology

329 IAC 7-3-1 Scoring

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. (a) The ISM combines three (3) scores assigned to a hazardous substance response site as follows:

- (1) S_M reflects the potential for harm to humans or the environment from migration of a hazardous substance away from the facility by routes involving ground water, surface water, or air. It is a composite of separate scores for each of the three (3) routes.
- (2) S_{FE} reflects the potential for harm from substances that can explode or cause fires.
- (3) S_{DC} reflects the potential for harm from direct contact with hazardous substances at the facility, i.e., no migration need be involved.

(b) The score for each hazard mode (migration, fire and explosion, and direct contact) or route is obtained by considering a set of factors that characterize the potential of the facility to cause harm. (See comprehensive list to rating factors table below.) Each factor is assigned a numerical value (on a scale of zero (0) to three (3), five (5), or eight (8)) according to prescribed guidelines. This value is then multiplied by a weighting factor yielding the factor score. The factor scores are then combined and scores within a factor category are added. Then the total scores for each factor category are multiplied together to develop a score for ground water, surface water, air, fire and explosion, and direct contact.

COMPREHENSIVE LIST TO RATING FACTORS

HAZARD MODE	FACTOR CATEGORY	FACTORS		
		GROUND WATER ROUTE	SURFACE WATER ROUTE	AIR ROUTE

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Migration	Route Characteristics Containment Waste Characteristics Targets	Depth to Aquifer of Concern Net Precipitation Permeability of Unsaturated Zone Physical State Containment Toxicity/Persistence Hazardous Waste Quantity Ground Water Use Distance to Nearest Well/Population Served	Facility Slope and Intervening Terrain One-Year 24-Hour Rainfall Distance to Nearest Surface Water Physical State Containment Toxicity/Persistence Hazardous Waste Quantity Surface Water Use Distance to Sensitive Environment Population Served/Distance to Water Intake Downstream	Reactivity/Incompatibility Toxicity Hazardous Waste Quantity Land Use Population Within 4-Mile Radius Distance to Sensitive Environment
Fire and Explosion	Containment Waste Characteristics Targets	Containment Direct Evidence Ignitability Reactivity Incompatibility Hazardous Waste Quantity Distance to Nearest Population Distance to Nearest Building Distance to Nearest Sensitive Environment Land Use Population Within 2-Mile Radius Number of Buildings within 2-Mile Radius		
Direct Contact	Observed Incident Accessibility Containment Toxicity Targets	Observed Incident Accessibility of Hazardous Substances Containment Toxicity Population Within 1-Mile Radius Distance to Sensitive Environment		

(c) In computing an individual migration route score, the product of its factor category scores is divided by the maximum possible score, and the resulting ratio is multiplied by one hundred (100). The last step puts all route scores on a scale of zero (0) to one hundred (100).

(d) In computing S_{FE} or S_{DC} , the product of its factor category divided by the maximum possible score and the resulting ratio is multiplied by ten (10). The last step puts all S_{FE} or S_{DC} scores on a scale of zero (0) to ten (10).

(e) S_M is a composite of the scores for the three (3) possible migration routes:

Where: $S_M = 1/1.73 (S_{gw})^2 + (S_{sw}) + (S_a)^2$
 S_{gw} = ground water route score
 S_{sw} = surface water route score
 S_a = air route score

(f) The effect of this means of combining the route scores is to emphasize the primary (highest scoring) route in aggregating route scores while giving some additional consideration to the secondary or tertiary routes if they score high. The factor 1/1.73 is used simply for the purpose of reducing S_M scores to a one hundred (100) point scale.

(g) The ISM does not quantify the probability of harm from a facility or the magnitude of the harm that could result, although the factors have been selected in order to approximate both those elements of risk. It is a procedure for ranking facilities in terms of the potential threat they pose by describing:

- (1) the manner in which the hazardous substances are contained;
- (2) the route by which they would be released;
- (3) the characteristics and amount of the harmful substances; and
- (4) the likely targets.

(h) The multiplicative combination of factor category scores is an approximation of the more rigorous approach in which one would express the hazard posed by a facility as the product of the probability of a harmful occurrence and the magnitude of the

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potential damage. (*Solid Waste Management Board; 329 IAC 7-3-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 12; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; errata filed Jan 30, 1991, 4:15 p.m.: 14 IR 1287; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 4. Indiana Scoring Model (ISM); General Considerations

329 IAC 7-4-1 Recording format

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. (a) Use of the ISM requires considerable information about the facility, its surroundings, the hazardous substances present, and the geological character of the area down to the aquifers that may be at risk. The ISM cover sheet below, illustrates a format for recording general information regarding the facility being evaluated. It can also serve as a cover sheet for the work sheets used in the evaluation.

[See following page for work sheet.]

Facility name: _____
 Location: _____
 Person(s) in charge of the facility: _____

Name of reviewer: _____ Date: _____
 General description of the facility:
 (For example: Landfill, surface impoundment, pile, container; types of hazardous substances; location of the facility; contamination route of major concern; types of information needed for rating; agency action, etc.)

Scores:

$$S_M = \begin{pmatrix} S_{gw} = \\ S_{sw} = \\ S_a = \\ S_{FE} = \\ S_{DC} = \end{pmatrix}$$

 ISM_T
 Sum of S_M S_{FE} S_{DC} _____
 ISM COVER SHEET

(b) When there are no data for a factor, it should be assigned a value of zero (0). However, if a factor with no data is the only factor in a category, e.g., containment, then the factor is given a score of one (1). If data are lacking for more than one (1) factor in connection with the evaluation of either S_{gw}, S_{sw}, S_a, S_{FE}, or S_{DC}, that route score is set at zero (0).

(c) 329 IAC 7-5 through 329 IAC 7-10 give detailed instructions and guidance for rating a facility. Each rule begins with a work sheet designed to conform to the sequence of steps required to perform the rating. Guidance for evaluating each of the factors then follows. If data are missing for more than one (1) factor in connection with the evaluation of a route, then set that route score at zero (0), i.e., there is no need to assign scores to factors in a route that will be set at zero (0). (*Solid Waste Management Board;*

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329 IAC 7-4-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 13; errata filed Jan 30, 1991, 4:15 p.m.: 14 IR 1287; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 5. Ground Water Migration Route

329 IAC 7-5-1 Observed release

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. If there is direct evidence of release of a substance of concern from a facility to ground water, enter a score of forty-five (45) on line 1 of the ground water work sheet below for the ground water route. Do not evaluate route characteristics and containment factors (lines 2 and 3 of the ground water route work sheet below). Direct evidence of release must be analytical. If a contaminant is measured (regardless of frequency) in ground water or in a well in the vicinity of the facility at a significantly (in terms of demonstrating that a release has occurred, not in terms of potential effects) higher level than the background level, then quantitative evidence exists, and a release has been observed. Qualitative evidence of release, e.g., an oily or otherwise objectionable taste or smell in well water, constitutes direct evidence only if it can be confirmed that it results from a release at the facility in question. If a release has been observed, proceed to section 4 of this rule, Waste characteristics, to continue scoring. If direct evidence is lacking, enter a value of zero (0) on line 1 of the ground water route work sheet below, and continue the scoring procedure by evaluating route characteristics.

Ground Water Route Work Sheet							
Rating Factor	Assigned Value (Circle One)			Multi-plier	Score	Max. Score	Ref. (Section)
1 Observed Release	0	45		1		45	3.1
If observed release is given a score of 45, proceed to line 4 . If observed release is given a score of 0, proceed to line 2 .							
2 Route Characteristics						3.2	
Depth to Aquifer of Concern	0	1	2	3	2	6	
Net Precipitation	0	1	2	3	1	3	
Permeability of the Unsaturated Zone	0	1	2	3	1	3	
Physical State	0	1	2	3	1	3	
Total Route Characteristics Score						15	
3 Containment	0	1	2	3	1		3.3
4 Waste Characteristics						3.4	
Toxicity/Persistence	0	3	6	9	12	15	18
Hazardous Waste Quantity	0	1	2	3	4	5	6
	7	8	1			8	
Total Waste Characteristics Score						26	

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5	Targets			3.5
	Ground Water Use	0 1 2 3	3	9
	Distance to Nearest Well/Population Served	} 0 4 6 8 10 12 16 18 20 24 30 32 35 40	1	40
Total Targets Score				49
6	If line 1 is 45, multiply 1 × 4 × 5 If line 1 is 0, multiply 2 × 3 × 4 × 5			57,330
7	Divide line 6 by 57,330 and multiply by 100			$S_{gw} =$

GROUND WATER ROUTE WORK SHEET

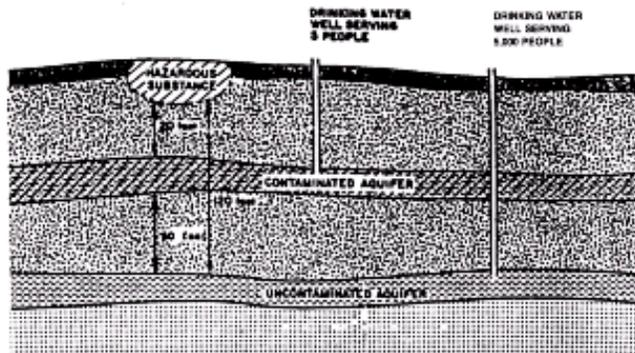
(Solid Waste Management Board; 329 IAC 7-5-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 14; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 7-5-2 Route characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. (a) Depth to aquifer of concern is measured vertically from the lowest point of the hazardous substances to the highest seasonal level of the saturated zone of the aquifer of concern (see figure below). This factor is one (1) indicator of the ease with which a pollutant from the facility could migrate to ground water. Assign a value as follows:

<u>Distance</u>	<u>Assigned Value</u>
> 150 feet	0.5
76 to 150 feet	1
21 to 75 feet	2
0 to 20 feet	3



*Treat target and route characteristics factors consistently. For example, if the upper aquifer is the aquifer of concern, then the “depth to aquifer of concern” is twenty (20) feet and the “population served” is five (5) persons. If the lower aquifer is “of concern”, the “depth” is one hundred twenty (120) feet (assuming no known contamination below the indicated “hazardous substance”) and the “population” is five thousand (5,000) persons. If the upper aquifer is contaminated and the lower aquifer is “of concern”, the “depth” would be eighty (80) feet (vertical distance between hazardous substance and aquifer of concern) and the population would be five thousand (5,000) persons.

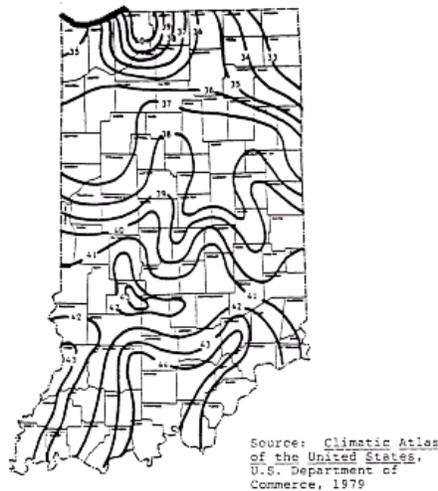
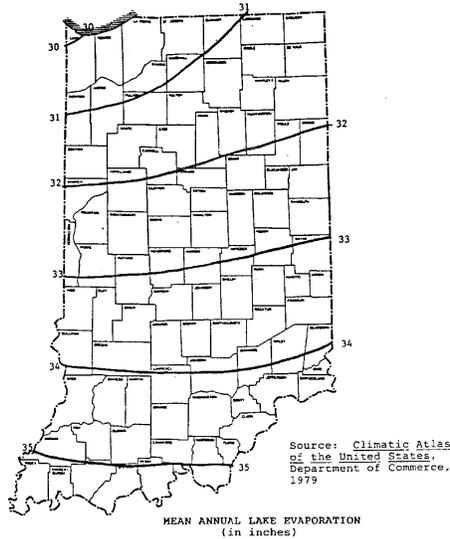
DEPTH TO AQUIFER OF CONCERN*

(b) Net precipitation (precipitation minus evaporation) indicates the potential for leachate generation at the facility. Net seasonal rainfall (seasonal rainfall minus seasonal evaporation) data may be used if available. If net precipitation is not measured in the region in which the facility is located, calculate it by subtracting the mean annual lake evaporation for the region (obtained

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from mean annual lake evaporation map below) from the mean annual precipitation for the region (obtained from mean annual precipitation map below). Assign a value as follows:

<u>Net Precipitation</u>	<u>Assigned Value</u>
< 5 inches	1
5 to 8 inches	2
> 8 inches	3



NORMAL ANNUAL TOTAL PRECIPITATION
(in inches)

(c) Permeability of unsaturated zone (or intervening geological formations) is an indicator of the speed at which a contaminant could migrate from a facility. Assign a value from permeability of geologic materials table below.

PERMEABILITY OF GEOLOGIC MATERIALS*

Type of Material	Approximate Range of Hydraulic Conductivity	Assigned Value
Clay, compact till, shale; unfractured metamorphic and igneous rocks	<10 ⁻⁷ cm/sec	0

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Silt, loess, silty clays, silty loams, clay loams; less permeable limestone, dolomites, and sandstone; moderately permeable till	$10^{-5} - 10^{-7}$ cm/sec	1
Fine sand and silty sand; sandy loams; loamy sands; moderately permeable limestone, dolomites, and sandstone (no karst); moderately fractured igneous and metamorphic rocks, some coarse till	$10^{-3} - 10^{-5}$ cm/sec	2
Gravel, sand; highly fractured igneous and metamorphic rocks; permeable basalt and lavas; karst limestone and domomite	$>10^{-3}$ cm/sec	3

*Derived from:

Davis, S.N., Porosity and Permeability of Natural Materials in Flow-Through Porous Media, R.J.M. DeWest Edition, Academic Press, New York, 1969

Freeze, R.A. and J.A. Cherry, Groundwater, Prentice-Hall, Inc., New York, 1979

(d) Physical state refers to the state of the hazardous substances at the time of disposal, except that gases generated by the hazardous substances in a disposal area should be considered in rating this factor. Each of the hazardous substances being evaluated is assigned a value as follows:

<u>Physical State</u>	<u>Assigned Value</u>
Solid, consolidated or stabilized	0
Solid, unconsolidated [<i>sic.</i>] or unstabilized	1
Powder or fine material	2
Liquid, sludge or gas	3

(Solid Waste Management Board; 329 IAC 7-5-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 15; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 7-5-3 Containment

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 3. Containment is a measure of the natural or artificial means that have been used to minimize or prevent a contaminant from entering ground water. Examples include liners, leachate collection systems, and sealed containers. In assigning a value to this rating factor as described in the containment value for ground water route table below, consider all ways in which hazardous substances are stored or disposed at the facility. If the facility involves more than one (1) method of storage or disposal, assign the highest from among all applicable values, e.g., if a landfill has a containment value of one (1), and, at the same location, a surface impoundment has a value of two (2), assign containment a value of two (2).

CONTAINMENT VALUE FOR GROUND WATER ROUTE

Assign containment a value of zero (0) if: (1) all the hazardous substances at the facility are underlain by an essentially nonpermeable surface (natural or artificial) and adequate leachate collection systems and diversion systems are present; or (2) there is no ground water in the vicinity. The value zero (0) does not indicate no risk. Rather, it indicates a significantly lower relative risk when compared with more serious sites on a national level. Otherwise, evaluate the containment for each of the different means of storage or disposal at the facility using the following guidance.

A. Surface Impoundment

	<u>Assigned Value</u>
Sound run-on diversion structure, essentially nonpermeable liner (natural or artificial) compatible with the waste, and adequate leachate collection system	0
Essentially nonpermeable compatible liner with no leachate collection system or inadequate freeboard	1
Potentially unsound run-on diversion structure or moderately permeable compatible liner	2
Unsound run-on diversion structure, no liner, or incompatible liner	3

B. Containers

Assigned Value

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Containers sealed and in sound condition, adequate liner, and adequate leachate collection system	0
Containers sealed and in sound condition, no liner, or moderately permeable liner	1
Containers leaking, moderately permeable liner	2
Containers leaking and no liner or incompatible liner	3
C. Piles	
	<u>Assigned Value</u>
Piles uncovered and waste stabilized or piles covered, waste unstabilized, and essentially nonpermeable liner	0
Piles uncovered, waste unstabilized, moderately permeable liner, and leachate collection system	1
Piles uncovered, waste unstabilized, moderately permeable liner, and no leachate collection system	2
Piles uncovered, waste unstabilized, and no liner	3
D. Landfill	
	<u>Assigned Value</u>
Essentially nonpermeable liner, liner compatible with waste, and adequate leachate collection system	0
Essentially nonpermeable compatible liner, no leachate collection system, and landfill surface precludes ponding	1
Moderately permeable, compatible liner, and landfill surface precludes ponding	2
No liner or incompatible liner, moderately permeable compatible liner, landfill surface encourages ponding, no run-on control	3

(Solid Waste Management Board; 329 IAC 7-5-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 18; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 7-5-4 Waste characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 4. (a) In determining a waste characteristics score, evaluate the most hazardous substances at the facility that could migrate, i.e., if scored, containment is not equal to zero (0), to ground water. Take the substance with the highest score as representative of the potential hazard due to waste characteristics. Note that the substance that may have been observed in the release category can differ from the substance used in rating waste characteristics. Where the total inventory of substances in a facility is known, only those present in amounts greater than the reportable quantity (see CERCLA Section 102 for definition) may be evaluated.

(b) Toxicity and persistence have been combined in the matrix below because of their important relationship. To determine the overall value for this combined factor, evaluate each factor individually as discussed below. Match the individual values assigned with the values in the matrix for the combined rating factor. Evaluate several of the most hazardous substances at the facility independently and enter only the highest score in the matrix on the work sheet.

Value for Toxicity	<u>Value for Persistence</u>			
	0	1	2	3
0	0	0	0	0
1	3	6	9	12
2	6	9	12	15
3	9	12	15	18

(c) Persistence of each hazardous substance is evaluated on its biodegradability as follows:

<u>Substance</u>	<u>Assigned Value</u>
Easily biodegradable compounds	0

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- Straight chain hydrocarbons 1
- Substituted and other ring compounds 2
- Metals, polycyclic compounds and halogenated hydrocarbons 3

More specific information is given in Tables 1 and 2 below.

TABLE 1 WASTE CHARACTERISTICS VALUES FOR SOME COMMON CHEMICALS				
	Toxicity ¹	Persistence ²	Ignitability ³	Reactivity ³
CHEMICAL/COMPOUND				
Acetaldehyde	3	0	3	2
Acetic Acid	3	0	2	1
Acetone	2	0	3	0
Aldrin	3	3	1	0
Ammonia, Anhydrous	3	0	1	0
Aniline	3	1	2	0
Benzene	3	1	3	0
Carbon Tetrachloride	3	3	0	0
Chlordane	3	3	0*	0*
Chlorobenzene	2	2	3	0
Chloroform	3	3	0	0
Cresol-o	3	1	2	0
Cresol-M&P	3	1	1	0
Cyclohexane	2	2	3	0
Endrin	3	3	1	0
Ethyl Benzene	2	1	3	0
Formaldehyde	3	0	2	0
Formic Acid	3	0	2	0
Hydrochloric Acid	3	0	0	0
Isopropyl Ether	3	1	3	1
Lindane	3	3	1	0
Methane	1	1	3	0
Methyl Ethyl Ketone	2	0	3	0
Methyl Parathion in Xylene Solution	3	0 ^a	3	2
Naphthalene	2	1	2	0
Nitric Acid	3	0	0	0
Parathion	3	0 ^a	1	2
PCB	3	3	0 ^a	0 ^a
Petroleum, Kerosene (Fuel Oil No. 1)	3	1	2	0
Phenol	3	1	2	0
Sulfuric Acid	3	0	0	2
Toluene	2	1	3	0
Trichlorobenzene	2	3	1	0
∞-Trichloroethane	2	2	1	0
Xylene	2	1	3	0

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¹ Sax, N. I., <u>Dangerous Properties of Industrial Materials</u> , Van Nostrand Rheinhold Co., New York, 4 th ed., 1975. The highest rating listed under each chemical is used.
² JRB Associates, Inc., <u>Methodology for Rating the Hazard Potential of Waste Disposal Sites</u> , May 5, 1980.
³ National Fire Protection Association, <u>National Fire Codes</u> , Vol. 13, No. 49, 1977.
*Professional judgment based on information contained in the U.S. Coast Guard CHRIS Hazardous Chemical Data, 1978.
⁴ Professional judgment based on existing literature.

TABLE 2
PERSISTENCE (BIODEGRADABILITY) OF
SOME ORGANIC COMPOUNDS*

VALUE - 3 HIGHLY PERSISTENT COMPOUNDS	
aldrin	heptachlor
benzopyrene	heptachlor epoxide
benzothiazole	1,2,3,4,5,7,7- heptachloronorborene
benzothiophene	hexachlorobenzene
benzyl butyl phthalate	hexachloro-1,3-butadiene
bromochlorobenzene	hexachlorocyclohexane
bromoform butanal	hexachloroethane
bromophenyl phyntl ether	methyl benzothiazole
chlordane	pentachlorobiphenyl
chlorohydroxy benzephenone	pentachlorophenol
bis-chloroisoprophyl ether	1,1,3,3-tetrachloroacetone
n-chloronitrobenzene	tetrachlorobiphenyl
DDE	thiomethylbenzothiazole
DDT	trichlorobenzene
dibromobenzene	trichlorobiphenyl
dibutyl phthalate	trichlorofluoromethane
1, 4-dichlorobenzene	2,4,6-trichlorophenol
dichlorodifluoroethane	triphenyl phosphate
dieldrin	bromodichloromethane
diethyl phthalate	bromoform
di(2-ethylhexyl) phthalate	carbon tetrachloride
dihexyl phthalate	chloroform
di-isobutyl phthalate	chloromochloromethane
dimethyl phthalate	dibromodichloroethane
4,6-dinitro-2-aminophenol	tetrachloroethane
dipropyl phthalate	1,1,2-trichloroethane
endrin	

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VALUE - 2 PERSISTENT COMPOUNDS	
acenaphthylene	cis-2-ethyl-4-methyl-1,3-dioxolane
atrazine	trans-2-ethyl-4-methyl-1,3-dioxolane
(diethyl) atrazine	guaiacol
barbital	2-hydroxyadiponitrile
borneol	isophorone
bromobenzene	indene
camphor	isoborneol
chlorobenzene	isopropenyl-r-isopropyl benzene
1,2-bis-chloroethoxy ethane	2-methoxy biphenyl
b-chloroethyl methyl ether	methyl biphenyl
chloromethyl ether	methyl chloride
chloromethyl ethyl ether	methylindane
3-chloropyridine	methylene chloride
di-t-butyl-p-benzoquinone	nitroanisole
dichloroethyl ether	nitrobenzene
dihydrocarvone	1,1,2-trichloroethylene
dimethyl sulfoxide	trimethyl-trioxo-hexahydro-triazine
2,6-dinitrotoluene	iosmer

VALUE - 1 SOMEWHAT PERSISTENT COMPOUNDS	
acetylene dichloride	limonene
behenic acid, methyl ester	methyl ester of lignoceric acid
benzene	methane
benzene sulfonic acid	2-methyl-5-ethyl-pyridine
butyl benzene	methyl naphthalene
butyl bromide	methyl palmitate
e-caprolactam	methyl phenyl carbinol
carbon-disulfide	methyl stearate
o-cresol	naphthalene
decane	nonane
1,2-dichloroethane	octane
1,2-dimethoxy benzene	octyl chloride
1,3-dimethyl naphthalene	pentane
1,4-dimethyl phenol	phenyl benzoate
dioctyl adipate	phthalic anhydride
n-dodecane	propylbenzene
ethyl benzene	l-terpineol
2-ethyl-n-hexane	toluene
o-ethyltoluene	vinyl benzene
isodecane	xylene
isoprophyl benzene	

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VALUE - 0 NONPERSISTENT COMPOUNDS	
acetaldehyde	methyl benzoate
acetic acid	3-methyl butanol
acetone	methyl ethyl ketone
acetophenone	2-methylpropanol
benzoic acid	octadecane
di-isobutyl carbinol	pentadecane
docosane	pentanol
eicosane	propanol
ethanol	propylamine
ethylamine	tetradecane
hexadecane	n-tridecane
methanol	n-undecane

(d) Toxicity of each hazardous substance being evaluated is given a value using the rating scheme of Sax (Table 3), or the National Fire Protection Association (NFPA) (Table 4), and the following guidance:

<u>Toxicity</u>	<u>Assigned Value</u>
Sax level 0 or NFPA level 0	0
Sax level 1 or NFPA level 1	1
Sax level 2 or NFPA level 2	2
Sax level 3 or NFPA level 3 or 4	3

Table 1 in subsection (c), presents values for some common compounds.

TABLE 3
SAX TOXICITY RATINGS

0—No Toxicity* (None)* *

This designation is given to materials which fall into one (1) of the following categories:

- (1) Materials which cause no harm under any conditions of normal use.
- (2) Materials which produce toxic effects on humans only under the most unusual conditions or by overwhelming dosage.

1—Slight Toxicity* (Low)* *

- (A) Acute local. Materials which on single exposures lasting seconds, minutes, or hours cause only slight effects on the skin or mucous membranes regardless of the extent of the exposure.
- (B) Acute systemic. Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce only slight effects following single exposures lasting seconds, minutes, or hours, or following ingestion of a single dose, regardless of the quantity absorbed or the extent of exposure.
- (C) Chronic local. Materials which on continuous or repeated exposures extending over periods of days, months, or years cause only slight and usually reversible harm to the skin or mucous membranes. The extent of exposure may be great or small.
- (D) Chronic systemic. Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce only slightly usually reversible effects extending over days, months, or years. The extent of the exposure may be great or small.

In general, those substances classified as having “slight toxicity” produce changes in the human body which are readily reversible and which will disappear following termination of exposure, either with or without medical treatment.

2—Moderate Toxicity* (Mod)* *

- (A) Acute local. Materials which on single exposure lasting seconds, minutes, or hours cause moderate effects on the skin or mucous membranes. These effects may be the result of intense exposure for a matter of seconds or moderate exposure for a matter of hours.
- (B) Acute systemic. Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and produce

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moderate effects following single exposure lasting seconds, minutes, or hours, or following ingestion of a single dose.

(C) Chronic local. Materials which on continuous or repeated exposures extending over periods of days, months, or years cause moderate harm to the skin or mucous membranes.

(D) Chronic systemic. Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce moderate effects following continuous or repeated exposures extending over periods of days, months, or years.

Those substances classified as having “moderate toxicity” may produce irreversible as well as reversible changes in the human body. These changes are not of such severity as to threaten life or to produce serious physical impairment.

3–Severe Toxicity* (High)* *

(A) Acute local. Materials which on single exposure lasting seconds or minutes cause injury to skin or mucous membranes of sufficient severity to threaten life or to cause permanent physical impairment or disfigurement.

(B) Acute systemic. Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which can cause injury of sufficient severity to threaten life following a single exposure lasting seconds, minutes, or hours, or following ingestion of a single dose.

(C) Chronic local. Materials which on continuous or repeated exposures extending over periods of days, months, or years can cause injury to skin or mucous membranes of sufficient severity to threaten life or cause permanent impairment, which disfigurement, or irreversible change.

(D) Chronic systemic. Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which can cause death or serious physical impairment following continuous or repeated exposures to small amounts extending over periods of days, months, or years.

*Sax, N.I., Dangerous Properties of Industrial Materials, Van Nostrand Rheinhold Company, New York, 4th Edition, 1975.

**Sax, N.I., Dangerous Properties of Industrial Materials, Van Nostrand Rheinhold Company, New York, 5th Edition, 1979.

TABLE 4
NFPA TOXICITY RATINGS*

0	Materials which on exposure under fire conditions would offer no health hazard beyond that of ordinary combustible material.
1	Materials only slightly hazardous to health. It may be desirable to wear self-contained breathing apparatus.
2	Materials hazardous to health, but areas may be entered freely with self-contained breathing apparatus.
3	Materials extremely hazardous to health, but areas may be entered with extreme care. Full protective clothing, including self-contained breathing apparatus, rubber gloves, boots and bands around legs, arms, and waist should be provided. No skin surface should be exposed.
4	A few whiffs of the gas or vapor could cause death, or the gas, vapor, or liquid could be fatal on penetrating the fire fighters' normal full protective clothing which is designed for resistance to heat. For most chemicals having a Health 4 rating, the normal full protective clothing available to the average fire department will not provide adequate protection against skin contact with these materials. Only special protective clothing designed to protect against the specific hazard should be worn.

*National Fire Protection Association. National Fire Codes, Vol. 13, No. 49, 1977.

(e) Hazardous waste quantity includes all hazardous substances at a facility (as received) except that with a containment value of zero (0). Do not include amounts of contaminated soil or water. In such cases, the amount of contaminating hazardous substances may be estimated. The hazardous waste quantity at a site may be reduced by documentation of an appropriate and verifiable removal action. It may be necessary to convert data to a common unit to combine them. In such cases, one (1) ton equals one (1) cubic yard equals four (4) drums, and for the purposes of converting bulk storage, one (1) drum equals fifty (50) gallons. Assign a value as follows:

<u>Tons/Cubic Yards</u>	<u>No. of Drums</u>	<u>Assigned Value</u>
0	0	0
>0-10	>0-40	1
11-62	41-250	2
63-125	251-500	3
126-250	501-1,000	4
251-625	1,001-2,500	5
626-1,250	2,501-5,000	6
1,251-2,500	5,001-10,000	7
>2,500	>10,000	8

(Solid Waste Management Board; 329 IAC 7-5-4; filed Sep 6, 1989, 1:00 p.m.: 13 IR 19; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

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329 IAC 7-5-5 Targets

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 5. (a) Ground water use indicates the nature of the use made of ground water drawn from the aquifer of concern within three (3) miles of the hazardous substance, including the geographical extent of the measurable concentration in the aquifer. Assign a value using the following guidance:

<u>Ground Water Use</u>	<u>Assigned Value</u>
Unusable, e.g., extremely saline aquifer, extremely low yield, etc.	0
Commercial, industrial, or irrigation and another water source presently available; not used, but usable	1
Drinking water with municipal water from alternate unthreatened sources presently available, i.e., minimal hookup requirements; or commercial, industrial or irrigation with no other water source presently available	2
Drinking water; no municipal water from alternate unthreatened sources presently available	3

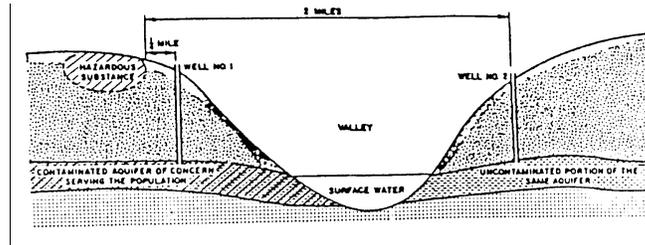
(b) Distance to nearest well and population served have been combined in the matrix below to better reflect the important relationship between the distance of a population from hazardous substances and the size of the population served by ground water that might be contaminated by those substances. To determine the overall value for this combined factor, score each individually as discussed below. Match the individual values assigned with the values in the matrix for the total score.

Value for Population Served	Value for Distance to Nearest Well				
	0	1	2	3	4
0	0	0	0	0	0
1	0	4	6	8	10
2	0	8	12	16	20
3	0	12	18	24	30
4	0	16	24	32	35
5	0	20	30	35	40

(c) Distance to nearest well is measured from the hazardous substance (not the facility boundary) to the nearest well that draws water from the aquifer of concern. If the actual distance to the nearest well is unknown, use the distance between the hazardous substance and the nearest occupied building not served by a public water supply, e.g., a farmhouse. If a discontinuity in the aquifer occurs between the hazardous substance and all wells, give this factor a score of zero (0), except where it can be shown that the contaminant is likely to migrate beyond the discontinuity. The illustration below shows how the distance should be measured. Assign a value as follows:

<u>Distance</u>	<u>Assigned Value</u>
>3 miles	0
2 to 3 miles	1
1 to 2 miles	2
2,001 feet to 1 mile	3
<2,000 feet	4

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In the situation depicted above, the distance between the hazardous substance and the nearest well (No. 1) is one-fourth (1/4) mile. If well No. 1 did not exist, the distance to well No. 2 would be immaterial since there is a discontinuity in the aquifer (surface water) between it and the hazardous substance. Under such circumstances, the factor score would be zero (0). However, if it could be demonstrated that the contaminant had bridged the discontinuity, then the distance to the nearest well would be two (2) miles (assuming well No. 1 does not exist).

(d) Population served by ground water is an indicator of the population at risk, which includes residents as well as others who would regularly use the water such as workers in factories or offices and students. Include employees in restaurants, motels, or campgrounds but exclude customers and travelers passing through the area in autos, buses, or trains. If aerial photography is used, and residents are known to use ground water, assume each dwelling unit has three and eight-tenths (3.8) residents. Where ground water is used for irrigation, convert to population by assuming one and five-tenths (1.5) persons per acre of irrigated land. The well or wells of concern must be within three (3) miles of the hazardous substances, including the area of known aquifer contamination, but the "population served" need not be. Likewise, people within three (3) miles who do not use water from the aquifer of concern are not to be counted. Assign a value as follows:

<u>Population</u>	<u>Assigned Value</u>
0	0
1-100	1
101-1,000	2
1,001-3,000	3
3,001-10,000	4
>10,000	5

(Solid Waste Management Board; 329 IAC 7-5-5; filed Sep 6, 1989, 1:00 p.m.: 13 IR 22; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 6. Surface Water Route

329 IAC 7-6-1 Observed release

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. Direct evidence of release to surface water must be quantitative evidence that the facility is releasing contaminants into surface water. Quantitative evidence could be the measurement of levels of contaminants from a facility in surface water, either at the facility or downhill from it, that represents a significant (in terms of demonstrating that a release has occurred, not in terms of potential effects) increase over background levels. If direct evidence of release has been obtained (regardless of frequency), enter a value of forty-five (45) on line 1 of the surface water route work sheet below, and omit the evaluation of the route characteristics and containment factors. If direct evidence of release is lacking, enter a value of zero (0) on line 1 and continue with the scoring procedure.

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Surface Water Route Work Sheet						
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)	
1 Observed Release	0 45	1		45	4.1	
If observed release is given a value of 45, proceed to line 4 . If observed release is given a value of 0, proceed to line 2 .						
2 Route Characteristics					4.2	
Facility Slope and Intervening Terrain	0 1 2 3	1		3		
1-yr. 24-hr. Rainfall	1 2 3	1		3		
Distance to Nearest Surface Water	0 1 2 3	2		6		
Physical State	0 1 2 3	1		3		
Total Route Characteristics Score				15		
3 Containment	0 1 2 3	1		3	4.3	
4 Waste Characteristics					4.4	
Toxicity/Persistence	0 3 6 9 12 15 18	1		18		
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8		
Total Waste Characteristics Score				26		
5 Targets					4.5	
Surface Water Use	1 2 3	3		9		
Distance to a Sensitive Environment	0 1 2 3	2		6		
Population Served/Distance to Water Intake	0 4 6 8 10	1		40		
Downstream	12 16 18 20 24 30 32 36 40					
Total Targets Score				55		
6 If line 1 is 45, multiply 1 × 4 × 5						
If line 1 is 0, multiply 2 × 3 × 4 × 5				64,360		
7 Divide line 6 by 64,360 and multiply by 100				$S_{sw} =$		

SURFACE WATER ROUTE WORK SHEET

(Solid Waste Management Board; 329 IAC 7-6-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 23; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 7-6-2 Route characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. (a) Facility slope and intervening terrain are indicators of the potential for contaminated runoff or spills at a facility to be transported to surface water. The facility slope is an indicator of the potential for runoff or spills to leave the facility. Intervening terrain refers to the average slope of the shortest path which would be followed by runoff between the facility boundary and the nearest downhill surface water. This rating factor can be assessed using topographic maps. The following table shows values assigned to various facility conditions.

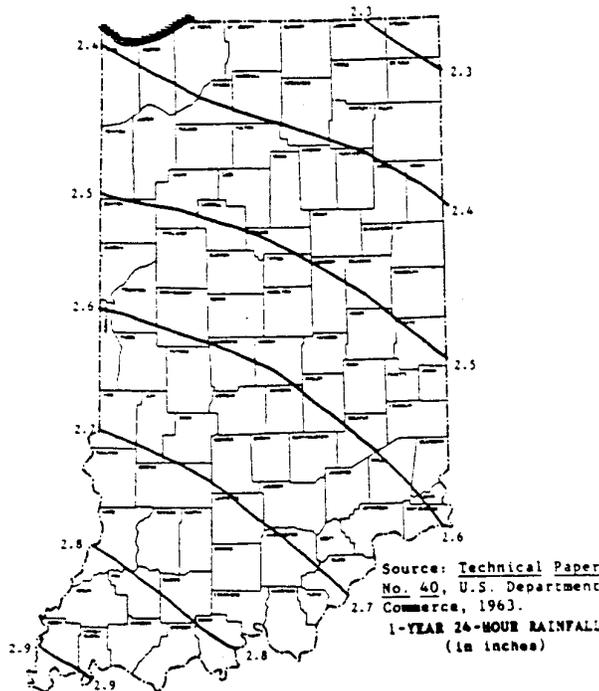
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Facility Slope	Intervening Terrain				
	Terrain Average Slope $\leq 3\%$; or Site Separated from Water Body by Areas of Higher Elevation	Terrain Average Slope 3-5%	Terrain Average Slope 5-8%	Terrain Average Slope $>8\%$	Site in Surface Water
Facility is closed basin	0	0	0	0	3
Facility has average slope $\leq 3\%$	0	1	1	2	3
Average slope 3-5%	0	1	2	2	3
Average slope 5-8%	0	2	2	3	3
Average slope $>8\%$	0	2	3	3	3

VALUES FOR FACILITY SLOPE AND INTERVENING TERRAIN

(b) One (1) year twenty-four (24) hour rainfall (obtained from the one (1) year twenty-four (24) hour rainfall map) indicates the potential for area storms to cause surface water contamination as a result of runoff, erosion, or flow over dikes. Assign a value as follows:

<u>Amount of Rainfall</u> (inches)	<u>Assigned Value</u>
<2.4	1
2.4-2.7	2
>2.7	3



(c) Distance to the nearest surface water is the shortest distance from the hazardous substance, (not the facility or property boundary) to the nearest downhill body of surface water, e.g., lake or stream, that is on the course that runoff can be expected to

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follow and that at least occasionally contains water. Do not include manmade ditches which do not connect with other surface water bodies. In areas having less than twenty (20) inches of normal annual precipitation (see 329 IAC 7-5-2(b), normal annual total precipitation map), consider intermittent streams. This factor indicates the potential for pollutants flowing overland and into surface water bodies. Assign a value as follows:

<u>Distance</u>	<u>Assigned Value</u>
>2 miles	0
1 to 2 miles	1
1,000 feet to 1 miles	2
<1,000 feet	3

(d) Physical state is assigned a value using the procedures in 329 IAC 7-5-2. (*Solid Waste Management Board; 329 IAC 7-6-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 25; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-6-3 Containment

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 3. Containment is a measure of the means that have been taken to minimize the likelihood of a contaminant entering surface water either at the facility or beyond the facility boundary. Examples of containment are diversion structures and the use of sealed containers. If more than one (1) type of containment is used at a facility, evaluate each separately as established in the containment values for surface water route table below. Assign the highest score.

CONTAINMENT VALUES FOR SURFACE WATER ROUTE

Assign containment a value of zero (0) if: (1) all the waste at the site is surrounded by diversion structures that are in sound condition and adequate to contain all runoff, spills, or leaks from the waste; or (2) intervening terrain precludes runoff from entering surface water. Otherwise, evaluate the containment for each of the different means of storage or disposal at the site and assign a value as follows:

<u>Surface Impoundment</u>	<u>Assigned Value</u>
Sound diking or diversion structure, adequate freeboard, and no erosion evident	0
Sound diking or diversion structure, but inadequate freeboard	1
Diking not leaking, but potentially unsound	2
Diking unsound, leaking, or in danger of collapse	3
<u>Containers</u>	
Containers sealed, in sound condition, and surrounded by sound diversion or containment system	0
Containers sealed and in sound condition, but not surrounded by sound diversion or containment system	1
Containers leaking and diversion or containment structures potentially unsound	2
Containers leaking, and no diversion or containment structures or diversion structures leaking or in danger of collapse	3
<u>Waste Piles</u>	
Piles are covered and surrounded by sound diversion or containment system	0
Piles covered, wastes unconsolidated, diversion or containment system not adequate	1
Piles not covered, wastes unconsolidated, and diversion or containment system potentially unsound	2
Piles not covered, wastes unconsolidated, and no diversion or containment or diversion system leaking or in danger of collapse	3
<u>Landfill</u>	
Landfill slope precludes runoff, landfill surrounded by sound diversion system, or landfill has adequate cover material	0
Landfill not adequately covered and diversion system sound	1
Landfill not covered and diversion system potentially unsound	2
Landfill not covered and no diversion system present, or diversion system unsound	3

(*Solid Waste Management Board; 329 IAC 7-6-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 26; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

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329 IAC 7-6-4 Waste characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 4. Evaluate waste characteristics for the surface water route with the procedures described in 329 IAC 7-5-4, for the ground water route. (*Solid Waste Management Board; 329 IAC 7-6-4; filed Sep 6, 1989, 1:00 p.m.: 13 IR 27; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-6-5 Targets

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 5. (a) Surface water use brings into the rating process the use being made of surface water downstream from the facility. The use or uses of interest are those associated with water taken from surface waters within a distance of three (3) miles from the location of the hazardous substance. Assign a value as follows:

	<u>Surface Water Use</u>	<u>Assigned Value</u>
Commercial, industrial or not currently used		1
Irrigation, economically important resources, e.g., shellfish, commercial food preparation, or recreation, e.g., fishing, boating, swimming		2
Drinking water		3

(b) Distance to a sensitive environment refers to the distance from the hazardous substance (not the facility boundary) to an area containing an important biological resource or to a fragile nature setting that could suffer an especially severe impact from contamination. The values for sensitive environment table below, provides guidance on assigning a value to this rating factor.

VALUES FOR SENSITIVE ENVIRONMENT (SURFACE WATER)

Assigned Value =	0	1	2	3
<u>DISTANCE TO WETLANDS*</u> (5 acre minimum)				
Fresh Water	>2 miles	1-2 miles	¼ to 1 mile	<¼ mile
<u>DISTANCE TO CRITICAL HABITAT</u> (of endangered, threatened, special concern, and extirpated wildlife)**				
	>2 miles	1-2 miles	¼ to 1 mile	<¼ mile

* Wetland is defined by the U.S. EPA in 40 C.F.R. 230.

** Endangered, threatened, special concern, and extirpated wildlife as defined in 310 IAC 3-3-6.11 [*310 IAC 3 was repealed filed Dec 2, 1987, 2:19 p.m.: 11 IR 1160.*]

(c) Population served by surface water with water intake within three (3) miles downstream from facility (or one (1) mile in static surface water such as a lake) is a rough indicator of the potential hazard exposure of the nearby population served by potentially contaminated surface water. Measure the distance from the probable point of entry to surface water following the surface water flow (stream miles). The population includes residents as well as others who would regularly use the water such as workers in factories or offices and students. Include employees in restaurants, motels, or campgrounds but exclude customers and travelers passing through the area in autos, buses, and trains. The distance is measured from the hazardous substance including observations in stream or sediment samples, regardless of facility boundaries. Where only residential houses can be counted, e.g., from an aerial photograph, and residents are known to be using surface water, assume three and eight-tenths (3.8) individuals per dwelling unit. Where surface water is used for irrigation, convert to population by assuming one and five-tenths (1.5) persons per acre of land irrigated. Assign a value as follows:

Distance to Surface Water

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	>3	2-3	1-2	2,001 feet	0-2,000
Population	miles	miles	miles	to 1 mile	feet
0	0	0	0	0	0
1-100	0	4	6	8	10
101-1,000	0	8	12	16	20
1,001-3,000	0	12	18	24	30
3,001-10,000	0	16	24	32	35
>10,000	0	20	30	35	40

(Solid Waste Management Board; 329 IAC 7-6-5; filed Sep 6, 1989, 1:00 p.m.: 13 IR 27; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 7. Air Route

329 IAC 7-7-1 Observed release

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. The only acceptable evidence of release for the air route is data that show levels of a contaminant at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of occurrence. If such evidence exists, enter a value of forty-five (45) on line 1 of the air route work sheet below. If not, assign line 1 a zero (0) value and then $S_a = 0$. Record the date, location, and the sampling protocol for monitoring data on the work sheet. Data based on transitory conditions due to facility disturbance by investigative personnel are not acceptable.

Air Route Work Sheet						
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)	
1 Observed Release	0 45	1		45	5.1	
Date and Location:						
Sampling Protocol:						
If line 1 is 0, the $S_a = 0$. Enter on line 5						
If line 1 is 45, then proceed to line 2						
2 Waste Characteristics					5.2	
Reactivity and Incompatibility	0 1 2 3	1		3		
Toxicity	0 1 2 3	3		9		
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8		
Total Waste Characteristics Score				20		
3 Targets					5.3	
Population Within 4-Mile Radius	} 0 9 12 15 18 } 21 24 27 30	1		30		
Distance to Sensitive Environment	0 1 2 3	2		6		
Land Use	0 1 2 3	1		3		
Total Targets Score				39		
4 Multiply 1 × 2 × 3				35,100		
5 Divide line 4 by 35,100 and multiply by 100	$S_a =$					

AIR ROUTE WORK SHEET

(Solid Waste Management Board; 329 IAC 7-7-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 28; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

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329 IAC 7-7-2 Waste characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. (a) The hazardous substance that was observed for scoring the release category may be different from the substance used to score waste characteristics.

(b) Reactivity and incompatibility, measures of the potential for sudden releases of concentrated air pollutants, are evaluated independently, and the highest value for either is recorded on the work sheet.

(c) Reactivity provides a measure of the fire/explosion threat at a facility. Assign a value based on the reactivity classification used by NFPA (see NFPA reactivity ratings table below). Reactivity ratings for a number of common compounds are given in 329 IAC 7-5-4(c), Table 1.

NFPA REACTIVITY RATINGS

NFPA LEVEL	Assigned Value
0 Materials which are normally stable even under fire exposure conditions and which are not reactive with water.	0
1 Materials which in themselves are normally stable but which may become unstable at elevated temperatures and pressures or which may react with water with some release of energy but not violently.	1
2 Materials which in themselves are normally unstable and readily undergo violent chemical change but do not detonate. Includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures or which can undergo violent chemical change at elevated temperatures and pressures. Also includes those materials which may react violently with water or which may form potentially explosive mixtures with water.	2
3 Materials which in themselves are capable of detonation or of explosive decomposition or of explosive reaction but which requires a strong initiating source or which must be heated under confinement before initiation. Includes materials which are sensitive to thermal or mechanical shock at elevated temperatures and pressures or which react explosively with water without requiring heat or confinement.	3
4 Materials which in themselves are readily capable of detonation or of explosive decomposition or explosive reaction at normal temperatures and pressures. Includes materials which are sensitive to mechanical or localized thermal shock.	3

(d) Incompatibility provides a measure of the increased hazard when hazardous substances are mixed under uncontrolled conditions, leading to production of heat, pressure, fire, explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases. The following table provides examples of incompatible combinations of materials. Additional information can be obtained from A Method for Determining the Compatibility of Hazardous Wastes, H. K. Hatayama, et al., EPA-600/2-80-076 (1980). Assign a value as follows:

<u>Incompatibility</u>	Assigned Value
No incompatible substances are present	0
Present but do not pose a hazard	1
Present and may pose a future hazard	2
Present and posing an immediate hazard	3

INCOMPATIBLE MATERIALS

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1-A	Group 1-B
Acetylene sludge	Acid sludge
Alkaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners

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Alkaline corrosive battery fluid	Electrolyte acid
Caustic wastewater	Etching acid liquid or solvent
Lime sludge and other corrosive alkalis	Pickling liquor and other corrosive acids
Lime wastewater	Spent acid
Lime and water	Spent mixed acid
Spent caustic	Spent sulfuric acid
Potential consequences: Heat generation; violent reaction.	
Group 2-A	Group 2-B
Aluminum	Any waste in Group 1-A or 1-B
Beryllium	
Calcium	
Lithium	
Potassium	
Sodium	
Zinc powder	
Other reactive metals and metal hydrides	
Potential consequences: Fire or explosion; generation of flammable hydrogen gas.	
Group 3-A	Group 3-B
Alcohols	Any concentrated waste in Groups 1-A or 1-B
Water	Calcium
	Lithium
	Metal hydrides
	Potassium
	SO ₂ Cl ₂ , SOCl ₂ , PCl ₂ , CH ₃ , SiCl ₃
	Other water-reactive waste
Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.	
Group 4-A	Group 4-B
Alcohols	Concentrated Group 1-A or 1-B wastes
Aldehydes	Group 2-A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents	
Potential consequences: Fire, explosion, or violent reaction.	
Group 5-A	Group 5-B
Spent cyanide and sulfide solutions	Group 1-B wastes
Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.	
Group 6-A	Group 6-B
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acids
Chlorites	Group 2-A wastes
Chromic acid	Group 4-A wastes
Hyphochlorites	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	

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- Perchlorates
- Permanganates
- Peroxides
- Other strong oxidizers

Potential consequences: Fire, explosion, or violent reaction.

Source: Hazardous Waste Management Law, Regulations, and Guidelines for the Handling of Hazardous Waste. California Department of Health, Sacramento, California, February 1975.

(e) Toxicity should be rated for the most toxic of the substances that can reasonably be expected to be transported away from the facility via the air route. Using the information given in 329 IAC 7-5-4(c), Table 1, and 329 IAC 7-5-4(d), Table 3 and Table 4, assign values as follows:

<u>Toxicity</u>	<u>Assigned Value</u>
Sax level 0 or NFPA level 0	0
Sax level 1 or NFPA level 1	1
Sax level 2 or NFPA level 2	2
Sax level 3 or NFPA levels 3 or 4	3

(f) Assign hazardous waste quantity a value as described in 329 IAC 7-5-4. (*Solid Waste Management Board; 329 IAC 7-7-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 29; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-7-3 Targets

- Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
- Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 3. (a) Population within a four (4) mile radius is an indicator of the population which may be harmed should hazardous substances be released to the air.

(b) The distance is measured from the location of the hazardous substances, not from the facility boundary. The population to be counted includes persons residing within the four (4) mile radius as well as transients such as workers in factories, offices, restaurants, motels, or students. It excludes travelers passing through the area. If aerial photography is used in making the count, assume three and eight-tenths (3.8) individuals per dwelling unit. Select the highest value for this rating factor as follows:

Population	Distance to Population from Hazardous Substance			
	0-4 miles	0-1 mile	0-½ mile	0-¼ mile
0	0	0	0	0
1-100	9	12	15	18
101-1,000	12	15	18	21
1,001-3,000	15	18	21	24
3,001-10,000	18	21	24	27
>10,000	21	24	27	30

(c) Distance to sensitive environment is an indicator of the likelihood that a region that contains important biological resources or that is a fragile natural setting would suffer serious damage if hazardous substances were to be released from the facility. Assign a value from 329 IAC 7-6-5(b).

(d) Land use indicates the nature and level of human activity in the vicinity of a facility. Assign highest applicable value from the values for land use table below.

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VALUES FOR LAND USE (AIR ROUTE)				
ASSIGNED [sic.] VALUE =	0	1	2	3
Distance to Commercial–Industrial	>1 mile	½-1 mile	¼-½ mile	<¼ mile
Distance to National/State Parks, Forests, Wildlife Reserves, and Residential Areas	>2 miles	1-2 miles	¼-1 mile	<¼ mile
Distance to Agricultural Lands (in production within 5 years)				
Ag Land	>1 mile	½-1 mile	¼-½ mile	<¼ mile
Prime Ag Land*	>2 miles	1-2 miles	½-1 mile	<½ mile
Distance to Historic/Landmark Sites (National Register of Historic Places and National Natural Landmarks)				within view of site or if site is subject to significant impacts

*Defined in 7 C.F.R. 657.5, 1981.

(Solid Waste Management Board; 329 IAC 7-7-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 31; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 8. Computing the Migration Hazard Mode Score, S_M

329 IAC 7-8-1 Migration hazard mode score

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. To compute S_M, complete the work sheet for computing S_M below, using the values of S_{gw}, S_{sw}, and S_a obtained from the previous sections.

	S	S ²
Ground Water Route Score (S _{gw})		
Surface Water Route Score (S _{sw})		
Air Route Score (S _a)		
$S_{gw}^2 + S_{sw}^2 + S_a^2$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		

WORKSHEET FOR COMPUTING S_M

(Solid Waste Management Board; 329 IAC 7-8-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 32; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

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Rule 9. Fire and Explosion

329 IAC 7-9-1 Computation

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. Compute a score for the fire and explosion hazard mode, S_{FE} , when either a state or local fire marshal has certified that the facility presents a significant fire and explosion threat to the public or to sensitive environments or there is a demonstrated fire and explosion threat based on field observations, e.g., combustible gas indicator readings. Document the threat. (*Solid Waste Management Board; 329 IAC 7-9-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 32; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-9-2 Containment

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. Containment is an indicator of the measures that have been taken to minimize or prevent hazardous substances at the facility from catching fire or exploding. Normally it will be given a value of three (3) on the fire and explosion work sheet below. If no hazardous substances that are individually ignitable or explosive are present and those that may be hazardous in combination are segregated and isolated so that they cannot come together to form incompatible mixtures, assign this factor a value of one (1).

Fire and Explosion Work

Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1 Containment	1 3	1		3	7.1
2 Waste Characteristics					7.2
Direct Evidence	0 3	1		3	
Ignitability	0 1 2 3	1		3	
Reactivity	0 1 2 3	1		3	
Incompatibility	0 1 2 3	1		3	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
Total Waste Characteristics Score				20	
3 Targets					7.3
Distance to Nearest Population	0 1 2 3 4 5	1		5	
Distance to Nearest Building	0 1 2 3	1		3	
Distance to Sensitive Environment	0 1 2 3	1		3	
Land Use	0 1 2 3	1		3	
Population Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Buildings Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Total Targets Score				24	
4 Multiply 1 × 2 × 3				1,440	
5 Divide line 4 by 1,440 and multiply by <u>10</u>					$S_{FE} =$

(*Solid Waste Management Board; 329 IAC 7-9-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 32; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-9-3 Waste characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

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Sec. 3. (a) Direct evidence of ignitability or explosion potential may exist in the form of measurements with appropriate instruments. If so, assign this factor a value of three (3). If not, assign a value of zero (0).

(b) Ignitability is an indicator of the threat of fire at a facility and the accompanying potential for release of air contaminants. Assign this rating factor a value based on the NFPA classification scheme (see NFPA ignitability levels and assigned values table below). 329 IAC 7-5-4(c), Table 1, gives values for a number of common compounds. Assign values as follows:

Ignitability	Assigned Value
Flashpoint 200°F, or NFPA level 0	0
Flashpoint 140°F to 200°F or NFPA level 1	1
Flashpoint 80°F to 140°F or NFPA level 2	2
Flashpoint 80°F or NFPA levels 3 or 4	3

NFPA IGNITABILITY LEVELS AND ASSIGNED VALUES

	NFPA LEVEL	ASSIGNED VALUE
4	Very flammable gases, very volatile flammable liquids, and materials that in the form of dusts or mists readily form explosive mixtures when dispersed in air.	3
3	Liquids which can be ignited under all normal temperature conditions. Any material that ignites spontaneously at normal temperatures in air.	
2	Liquids which must be moderately heated before ignition will occur and solids that readily give off flammable vapors.	2
1	Materials that must be preheated before ignition can occur. Most combustible solids have a flammability rating of 1.	1
0	Materials that will not burn.	0

(c) Reactivity. Assign values as in 329 IAC 7-7-2.

(d) Incompatibility. Assign values as in 329 IAC 7-7-2.

(e) Hazardous waste quantity. Assign values as in 329 IAC 7-5-4. (*Solid Waste Management Board; 329 IAC 7-9-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 34; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 7-9-4 Targets

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 4. (a) Distance to nearest population is the distance from the hazardous substance to the nearest building or area in which one (1) or more persons are likely to be located either for residential, educational, business, occupational, or recreational purposes. It is an indicator of the potential for harm to humans from fire and explosion. The building or area need not be off-site. Assign values as follows:

Distance	Assigned Value
>2 miles	0
1 mile-2 miles	1
½ mile-1 mile	2
201 feet-½ mile	3
51 feet-200 feet	4
0-50 feet	5

(b) Distance to nearest building is an indicator of the potential for property damage as a result of fire or explosion. Assign a value as follows:

Distance	Assigned Value
>½ mile	0
201 feet-½ mile	1
51-200 feet	2
0-50 feet	3

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(c) Distance to nearest sensitive environment is measured from the hazardous substances, not from the facility boundary. It is an indicator of potential harm to a sensitive environment from fire or explosion at the facility. Select the highest value using the guidance provided in the values for sensitive environments table below, except assign a value of three (3) where fire could be expected to spread to a sensitive environment even though that environment is more than one hundred (100) feet from the hazardous substance.

VALUES FOR SENSITIVE ENVIRONMENT (FIRE AND EXPLOSION)

ASSIGNED VALUE =	0	1	2	3
Distance to Wetlands*	>100 feet	–	–	<100 feet
Distance to Critical Habitat**	>½ mile	1,000 feet-½ mile	100-1,000 feet	<100 feet

* Wetland is defined by the U.S. EPA 40 C.F.R. 230, Appendix A, 1980.

** Designated by the U.S. Fish and Wildlife Service.

(d) Land use. Assign values as in 329 IAC 7-7-3.

(e) Population within two (2) mile radius (measured from the location of the hazardous substance, not from the facility boundary) is a rough indicator of the population at risk in the event of fire or explosion at a facility. The population to be counted includes those residing within the two (2) mile radius as well as people regularly in the vicinity such as workers in factories, offices, or students. It does not include travelers passing through the area. If aerial photography is used in making the count, assume three and eight-tenths (3.8) individuals per dwelling. Assign values as follows:

<u>Population</u>	<u>Assigned Value</u>
0	0
1-100	1
101-1,000	2
1,001-3,000	3
3,001-10,000	4
>10,000	5

(f) Number of buildings within two (2) mile radius (measured from the hazardous substance, not from the facility boundary) is a rough indicator of the property damage that could result from fire and explosion at a facility. Assign values to this factor as follows:

<u>Number of Buildings</u>	<u>Assigned Value</u>
0	0
1-26	1
27-260	2
261-790	3
791-2,600	4
>2,600	5

(Solid Waste Management Board; 329 IAC 7-9-4; filed Sep 6, 1989, 1:00 p.m.: 13 IR 34; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 10. Direct Contact

329 IAC 7-10-1 General

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 1. The direct contact hazard mode refers to the potential for injury by direct contact with hazardous substances at the facility. *(Solid Waste Management Board; 329 IAC 7-10-1; filed Sep 6, 1989, 1:00 p.m.: 13 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

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329 IAC 7-10-2 Observed incident

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 2. If there is a confirmed instance in which contact with hazardous substances at a facility has caused injury, illness, or death to humans or domestic or wild animals, enter a value of forty-five (45) on line 1 of the direct contact work sheet below, and proceed to line 4 (toxicity). Document the incident giving the date, location, and pertinent details. If no such instance is known, enter zero (0) on line 1 and proceed to line 2.

Direct Contact Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
<input type="checkbox"/> 1 Observed Incident	0 45	1		45	8.1
If line <input type="checkbox"/> 1 is 45, proceed to line <input type="checkbox"/> 4 If line <input type="checkbox"/> 1 is 0, proceed to line <input type="checkbox"/> 2					
<input type="checkbox"/> 2 Accessibility	0 1 2 3	1		3	8.2
<input type="checkbox"/> 3 Containment	0 15	1		15	8.3
<input type="checkbox"/> 4 Waste Characteristics Toxicity	0 1 2 3	5		15	8.4
<input type="checkbox"/> 5 Targets					8.5
Population Within 1-Mile Radius	0 1 2 3 4 5	4		20	
Distance to a Sensitive Environment	0 1 2 3 4 5	4		20	
Total Targets Score				40	
<input type="checkbox"/> 6 If line <input type="checkbox"/> 1 is 45, multiply <input type="checkbox"/> 1 × <input type="checkbox"/> 4 × <input type="checkbox"/> 5 If line <input type="checkbox"/> 1 is 0, multiply <input type="checkbox"/> 2 × <input type="checkbox"/> 3 × <input type="checkbox"/> 4 × <input type="checkbox"/> 5				27,000	
<input type="checkbox"/> 7 Divide line <input type="checkbox"/> 6 by 27,000 and multiply by 10 $S_{DC} =$					

DIRECT CONTACT WORKSHEET

(Solid Waste Management Board; 329 IAC 7-10-2; filed Sep 6, 1989, 1:00 p.m.: 13 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 7-10-3 Accessibility

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2

Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 3. Accessibility to hazardous substance refers to the measures taken to limit access by humans or animals to hazardous substances. Assign a value using the following guidance:

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<u>Barrier</u>	<u>Assigned Value</u>
A 24-hour surveillance system, e.g., television monitoring or surveillance by guards or facility personnel, which continuously monitors and controls entry onto the facility	0
or	
an artificial or natural barrier, e.g., a fence combined with a cliff, which completely surrounds the facility; and a means to control entry, at all times, through the gates or other entrances to the facility, e.g., an attendant, television monitors, locked entrances, or controlled roadway access to the facility.	
Security guard, but no barrier	1
A barrier, but no separate means to control entry	2
Barriers do not completely surround the facility	3
<i>(Solid Waste Management Board; 329 IAC 7-10-3; filed Sep 6, 1989, 1:00 p.m.: 13 IR 36; errata filed Sep 25, 1990, 3:25 p.m.: 14 IR 289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)</i>	

329 IAC 7-10-4 Containment

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 4. Containment indicates whether the hazardous substance itself is accessible to direct contact. For example, if the hazardous substance at the facility is in surface impoundments, containers (sealed or unsealed), piles, tanks, or landfills with a cover depth of less than two (2) feet, or has been spilled on the ground or other surfaces easily contacted, e.g., the bottom of shallow pond or creek, assign this rating factor a value of fifteen (15). Otherwise, assign a value of zero (0). *(Solid Waste Management Board; 329 IAC 7-10-4; filed Sep 6, 1989, 1:00 p.m.: 13 IR 37; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 7-10-5 Waste characteristics

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 5. Toxicity. Assign a value as in 329 IAC 7-5-4. *(Solid Waste Management Board; 329 IAC 7-10-5; filed Sep 6, 1989, 1:00 p.m.: 13 IR 37; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 7-10-6 Targets

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 6. Population within one (1) mile radius is a rough indicator of the population including transients that could be involved in direct contact incidents at an uncontrolled facility. Assign a value as follows:

<u>Population</u>	<u>Assigned Value</u>
0	0
1 - 100	1
101 - 1,000	2
1,001 - 3,000	3
3,001 - 10,000	4
>10,000	5

(Solid Waste Management Board; 329 IAC 7-10-6; filed Sep 6, 1989, 1:00 p.m.: 13 IR 37; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 7-10-7 Distance to sensitive environment

Authority: IC 13-7-5-3; IC 13-7-7-1; IC 13-7-8.7-2
 Affected: IC 13-7-5-3; IC 13-7-5-7; IC 13-7-8.7

Sec. 7. Distance to a sensitive environment refers to the distance from the hazardous substance (not the facility boundary) to

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an area containing an important biological resource or to a fragile or unique natural setting that could suffer an impact from contamination. These areas include but are not limited to:

- National Lakeshores
- National Forests
- National Wildlife Refuges
- State Park and Recreation Areas
- State Forests
- State Reservoirs
- State Fish and Wildlife Areas
- State Nature Preserves
- Wildlife Habitat Trust Areas
- Wetland Conservation Areas
- County Parks
- County Wildlife Areas
- City Parks
- City Wildlife Areas

<u>Distance</u>	<u>Assigned Value</u>
>2 mile	0
1 ½ to 2 mile	1
1 to 1½ mile	2
½ to 1 mile	3
¼ to ½ mile	4
<¼ mile	5

(Solid Waste Management Board; 329 IAC 7-10-7; filed Sep 6, 1989, 1:00 p.m.: 13 IR 37; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 11. Deletion Procedures; Agency and Petition Deletions

329 IAC 7-11-1 Deletion procedure agency deletion

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 1. Procedures for deleting sites from the commissioner's bulletin by agency deletion are as follows:

- (1) Sites must have been evaluated using the Indiana Scoring Model and received a score of ten (10) or less or be eligible for deletion under 329 IAC 7-2-6(2).
- (2) The commissioner shall notice the local or county health or environmental agency of the proposed agency deletion. The notice shall include the following:
 - (A) Name.
 - (B) Location.
 - (C) Property legal description.
 - (D) Current owners or operators.
 - (E) Property ownership.
 - (F) Operation history.
 - (G) A comprehensive summary that includes:
 - (i) the current site conditions; and
 - (ii) an explanation that these current site conditions do not pose a significant environmental concern.
- (3) The commissioner shall solicit a correspondence regarding the proposed agency deletion from the:
 - (A) local officials;
 - (B) county health department; or
 - (C) environmental agency.
- (4) The commissioner shall provide the following as necessary:

- (A) Answers to any public comments received.
- (B) A forum for public meetings.
- (5) The commissioner will consider comments received from the:
 - (A) public;
 - (B) county commissioners;
 - (C) town board; or
 - (D) mayor's office.
- (6) Forty-five (45) days after initiation of agency deletion procedures, the commissioner will notify interested parties, if the site will be deleted from the commissioner's bulletin.

(Solid Waste Management Board; 329 IAC 7-11-1; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 16, 2001, 4:40 p.m.: 25 IR 1124)

329 IAC 7-11-2 Deletion procedures; petition deletion

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 2. Procedures for deleting sites from the commissioner's bulletin by petition deletions are as follows:

- (1) Sites must have been evaluated using the Indiana Scoring Model and received a score of ten (10) or less or be eligible for deletion under 329 IAC 7-2-6(2).
- (2) The commissioner must receive a petition for deleting a site from the commissioner's bulletin. The petition correspondence must include the following:
 - (A) Name.
 - (B) Location.
 - (C) Property legal description.
 - (D) Current owners or operators.
 - (E) Property ownership.
 - (F) Operational history records relating to the hazardous waste activities.
 - (G) A comprehensive summary that includes:
 - (i) the current site conditions; and
 - (ii) an explanation that these current site conditions do not pose a significant environmental concern.
 - (H) Correspondence from the:
 - (i) local officials;
 - (ii) county health department; or
 - (iii) environmental agency;delineating their position on the proposed deletion.
- (3) The commissioner shall provide the following as necessary with petitioner's participation:
 - (A) Public hearings.
 - (B) Public meetings.
 - (C) Information necessary to answer public comments.
- (4) The commissioner will consider comments received from the:
 - (A) public;
 - (B) county commissioners;
 - (C) town board; or
 - (D) mayor's office.
- (5) The commissioner will notify all interested parties, within forty-five (45) days after complete and adequate petition correspondence is received by the commissioner, if the site will be deleted from the commissioner's bulletin.

(Solid Waste Management Board; 329 IAC 7-11-2; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 16, 2001, 4:40 p.m.: 25 IR 1125)

329 IAC 7-11-3 Deletion procedures: site relisted

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 3. Sites may be deleted from the commissioner's bulletin if the site scores a score of ten (10) or less or is eligible for deletion under 329 IAC 7-2-6(2). Sites that are deleted, which subsequently receive a score higher than ten (10), may be relisted on the commissioner's bulletin if new information becomes available to indicate that site conditions have changed and the site warrants reevaluation. (*Solid Waste Management Board; 329 IAC 7-11-3; filed Oct 28, 1998, 3:26 p.m.: 22 IR 754; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 16, 2001, 4:40 p.m.: 25 IR 1125*)

ARTICLE 8. HOUSEHOLD HAZARDOUS WASTE GRANTS PROGRAM

Rule 1. Purpose

329 IAC 8-1-1 Purpose

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 1. The purpose of this program is to provide matching grants for local units of government and solid waste districts to establish a household hazardous waste collection and disposal program. This includes developing education programs to reduce generation of household hazardous waste or reduce quantity of household hazardous waste for disposal; to inform the public of nonhazardous and nontoxic substitutes for household hazardous products; and to promote proper handling, storage, and disposal of household hazardous waste. The department may award a grant under this article to an eligible unit or district that has developed a household hazardous waste collection and disposal program that does the following:

- (1) Provides educational literature describing the hazards associated with household hazardous waste.
- (2) Utilizes a licensed hazardous waste transportation service to collect, handle, pack, transport, and dispose of collected household hazardous waste if collection is part of the project.
- (3) Allows and encourages participation from all households within a designated household hazardous waste collection area that is specified in the grant application.

(*Solid Waste Management Board; 329 IAC 8-1-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 32; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 2. Definitions

329 IAC 8-2-1 Definitions

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 1. The definitions in this rule apply throughout this article. (*Solid Waste Management Board; 329 IAC 8-2-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 8-2-2 "Commissioner" defined

Authority: IC 13-7-33
Affected: IC 13-7-2-11

Sec. 2. "Commissioner" refers to the commissioner of the department of environmental management created under IC 13-7-2-11. (*Solid Waste Management Board; 329 IAC 8-2-2; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 8-2-3 “District” defined

Authority: IC 13-7-33
Affected: IC 13-9.5-2-1

Sec. 3. “District” refers to a solid waste management district established under IC 13-9.5-2-1. *(Solid Waste Management Board; 329 IAC 8-2-3; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-2-4 “Grantee” defined

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 4. “Grantee” refers to a person who receives a grant under this article. *(Solid Waste Management Board; 329 IAC 8-2-4; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-2-5 “Household waste” defined

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 5. “Household waste” means any material derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas. *(Solid Waste Management Board; 329 IAC 8-2-5; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-2-6 “Household hazardous waste” defined

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 6. “Household hazardous waste” means hazardous waste generated by households that:

- (1) is ignitable, as defined under 40 CFR 261.21;
- (2) is toxic, as defined under 40 CFR 261.24;
- (3) is reactive, as defined under 40 CFR 261.23;
- (4) is corrosive, as defined under 40 CFR 261.22; or
- (5) otherwise poses a threat to human health or the environment.

(Solid Waste Management Board; 329 IAC 8-2-6; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 8-2-7 “Project” defined

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 7. “Project” refers to a household hazardous waste collection and disposal project. *(Solid Waste Management Board; 329 IAC 8-2-7; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-2-8 “Unit” defined

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 8. “Unit” means county, municipality, or township. *(Solid Waste Management Board; 329 IAC 8-2-8; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-2-9 "Department" defined

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 9. "Department" refers to the department of environmental management. (*Solid Waste Management Board; 329 IAC 8-2-9; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 3. Grant Application

329 IAC 8-3-1 Grant application

Authority: IC 13-7-33

Affected: IC 13-9.5-1-3; IC 16-6-9-2

Sec. 1. The contents of an application for a grant shall include the following:

- (1) A statement describing a project's scope of activities and objectives that identifies the persons responsible for project planning, coordination, and implementation.
- (2) A map specifying the area to be served by the project that includes the locations of household hazardous waste collection sites.
- (3) A description of proposed information and educational activities which describes the hazards associated with household hazardous waste.
- (4) A description of safety and security measures that will be implemented during the project.
- (5) A budget showing all estimated project costs that includes ineligible project costs and eligible project costs as described in 329 IAC 8-4-1.
- (6) A formal resolution by the legislative board, as defined under IC 13-9.5-1-3, of a unit or district involved in the grant project that does the following:
 - (A) Authorizes the project and the grant application.
 - (B) Expresses the specific intent to carry out all proposed project activities described in the grant application.
 - (C) Allows department employees to have access to and inspect proposed household hazardous waste collection sites involved in the project.
 - (D) Commits the applicant to do the following:
 - (i) Maintain appropriate records that document all expenditures made during the project.
 - (ii) Submit to the department a final report describing all project activities, achievements, and problems that compares the actual project to the objectives and activities proposed in the grant application, including the following:
 - (AA) Samples of all informational and educational materials prepared and distributed.
 - (BB) Data on the household participation rates.
 - (CC) Waste quantities collected by category.
 - (DD) Documentation of all costs.
 - (EE) Recommendations for project improvements.
 - (E) Contains a timetable for completion of the project that:
 - (i) does not exceed twelve (12) months; and
 - (ii) includes anticipated dates of:
 - (AA) information and educational activities;
 - (BB) waste collection; and
 - (CC) submission of final reports.
 - (F) Commits the applicant to provide all funding required to implement and administer the project, not including the grant award.
 - (G) Commits the applicant to develop a proposed plan for a permanent household hazardous waste program that includes sources of funding and timetable for implementation.
 - (H) Commits the applicant to develop a proposed plan for a permanent household hazardous product program designed to educate the public as to nonhazardous and nontoxic substitutes for household hazardous products, as defined under

IC 16-6-9-2.

(Solid Waste Management Board; 329 IAC 8-3-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 33; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 4. Project Costs

329 IAC 8-4-1 Requirements

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 1. (a) An applicant must submit the following information for eligibility:

(1) Estimated project costs submitted to the department must include both eligible and ineligible costs. The ineligible project costs for grant funding may not be used to fulfill a grantee's match requirement. Furthermore, a grantee is responsible for all project costs except the costs funded by the grant.

(2) Ineligible project costs are the following:

(A) Costs incurred before the approval of a grant.

(B) Costs incurred more than twelve (12) months after a grant has been accepted.

(C) Costs incurred by a grantee that exceed original estimated eligible project costs indicated in a grant program application.

(D) Other costs that are not specifically related to a project as determined by the department.

(3) Eligible project costs include the following:

(A) Costs used to fulfill the grantee's match requirements.

(B) Costs funded by the grant.

(b) Project costs that are not ineligible under subsection (a)(2) are eligible project costs for purposes of subsection (a)(3).

(Solid Waste Management Board; 329 IAC 8-4-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 34; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 5. Terms and Conditions

329 IAC 8-5-1 Grants awarded to applicants

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 1. Grants will be awarded under the following conditions:

(1) The grant awarded may not exceed fifty percent (50%) of the total eligible costs estimated in a grant application.

(2) The grant must be matched by an applicant's financial or in kind contributions.

(Solid Waste Management Board; 329 IAC 8-5-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 34; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 8-5-2 Acceptance of the grant

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 2. Upon acceptance of the grant, the following applies:

(1) The department shall pay the grantee seventy-five percent (75%) of the grant for the project on acceptance.

(2) The remaining twenty-five percent (25%) of the grant shall be paid to the grantee after the grantee submits the following to the department:

(A) Final report of the program.

(B) Final expenditures have been audited and approved in writing from the department.

(Solid Waste Management Board; 329 IAC 8-5-2; filed Aug 27, 1992, 9:00 a.m.: 16 IR 34; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 8-5-3 Project expenditures

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 3. (a) A grantee shall submit to the department documentation of all project expenditures:

- (1) thirty (30) days after completion of the project;
- (2) twelve (12) months after the grant is awarded; or
- (3) whichever comes first.

(b) A grantee shall specify the source of funds expended on a project by the following ways:

- (1) Ineligible costs.
- (2) Eligible costs.

(c) Unexpended grant money shall be returned to the hazardous substance trust fund within sixty (60) days after the department has done the following:

- (1) Completed the department's final audit of project expenditures.
- (2) Notified the grantee, in writing, of the unexpended amount.

(Solid Waste Management Board; 329 IAC 8-5-3; filed Aug 27, 1992, 9:00 a.m.: 16 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 6. Grant Awards

329 IAC 8-6-1 Grant awards

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 1. In reviewing project applications for grant awards, the department may award a grant to an eligible applicant who meets the minimum requirements of 329 IAC 8-1-1 and all other requirements in this article. In determining the priority in granting awards among the applicants, the department shall consider evidence of the following in making the determination:

- (1) A commitment by the applicant to an annual household hazardous waste collection and disposal program, evidenced by a formal resolution by the unit or district to undertake annual action to promote proper collection and disposal of household hazardous waste.
- (2) The project application describes a program that includes an effective program to educate the public of the proper handling, storage, and disposal of household hazardous waste and promotes practices that reduce or eliminate the generation of household hazardous waste.
- (3) The applicant has sponsored or participated in other hazardous waste collection and disposal programs, including those sponsored and/or funded by civic organizations or private foundations.
- (4) The project application provides information on an educational project by the applicant concerning nonhazardous and nontoxic substitutes for household hazardous products.

(Solid Waste Management Board; 329 IAC 8-6-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 8-6-2 Priority for grant awards

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 2. The department shall place the highest priority for grant awards to the evaluation of the size and expected effectiveness of the education program as established under section 1(2) of this rule. Education programs may target both households and elementary and secondary schools in the area. Innovative approaches to reducing generation of household hazardous waste or reducing the quantity of household hazardous wastes for disposal may be prioritized over approaches that emphasize proper collection and disposal. *(Solid Waste Management Board; 329 IAC 8-6-2; filed Aug 27, 1992, 9:00 a.m.: 16 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-6-3 Multiple grant awards

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 3. A unit or district may apply for more than one (1) grant within the same calendar year if funds through the department are available after awarding grants to all other eligible applicants. *(Solid Waste Management Board; 329 IAC 8-6-3; filed Aug 27, 1992, 9:00 a.m.: 16 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 8-6-4 Department procedures

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 4. The department shall review all applications submitted by eligible units or districts. The department may establish schedules and procedures for submitting grant applications as long as all eligible units or districts are provided an opportunity to submit an application for available funding during each calendar year. *(Solid Waste Management Board; 329 IAC 8-6-4; filed Aug 27, 1992, 9:00 a.m.: 16 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 7. Exemptions

329 IAC 8-7-1 Request for exemptions

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 1. Applicants may request an exemption from a requirement in this article by submitting a written request to the department with the following information:

- (1) The request must contain a detailed description of the basis for a requested exemption.
- (2) The request shall be reviewed by the department with regard to:
 - (A) a potential nuisance;
 - (B) a hazard to public health or safety; or
 - (C) estimated degradation of the environment.
- (3) An exemption granted by the department must:
 - (A) be in writing; and
 - (B) clearly state the reason for the exemption.

(Solid Waste Management Board; 329 IAC 8-7-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 35; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 8-7-2 Termination

Authority: IC 13-7-33
Affected: IC 13-7-33

Sec. 2. (a) A grant may be terminated if the department determines that there is:

- (1) no sustained progress in meeting a timetable established;
- (2) substantial evidence that a grant was obtained by fraud; or
- (3) substantial evidence of gross abuse or corrupt practices in the administration or implementation of a project.

(b) If the department terminates a grant, the grantee shall return the full amount of the grant received. *(Solid Waste Management Board; 329 IAC 8-7-2; filed Aug 27, 1992, 9:00 a.m.: 16 IR 36; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 8. Reservation of Rights

329 IAC 8-8-1 Rights of reservation for applicant

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 1. The following rights shall be reserved:

(1) Nothing in this article prohibits a grantee from requiring more assurances, guarantees, indemnity, or other contractual requirements from any party performing work on the project.

(2) Nothing in this article affects the department's rights under existing rules to take remedial action including, but not limited to, action for breach of contract against the grantee who fails to carry out obligations under this article.

(3) Review or approval of any document by or for the department does not relieve the grantee of responsibility to properly develop a household hazardous waste project as required by state statute or rule.

(4) The department is not responsible for increased costs resulting from defects in the project or other associated documentation.

(Solid Waste Management Board; 329 IAC 8-8-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 36; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 9. Rights of Review

329 IAC 8-9-1 Review procedures

Authority: IC 13-7-33

Affected: IC 13-7-33

Sec. 1. A grantee whose application is denied or who objects to any special condition of the grant agreement as defined by this article may request a special review by the commissioner, or the commissioner's designee, whose decision is final. *(Solid Waste Management Board; 329 IAC 8-9-1; filed Aug 27, 1992, 9:00 a.m.: 16 IR 36; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

ARTICLE 9. UNDERGROUND STORAGE TANKS

Rule 1. Applicability; Definitions

329 IAC 9-1-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1. (a) The requirements of this article apply to all owners and operators of a UST system as defined in section 49 of this rule, except as otherwise provided in subsections (b), (c), and (d). Any UST system listed in subsection (c) shall meet the requirements of section 1.1 of this rule. Nothing in this article shall be construed to conflict with, circumvent, rescind, or repeal any authority, power, or duty possessed by the office of the state fire marshal under Indiana law.

(b) The following UST systems are excluded from the requirements of this article:

(1) Any UST system holding:

(A) hazardous wastes regulated under Subtitle C (42 U.S.C. 6921 through 42 U.S.C. 6939b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996; or

(B) a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 (33 U.S.C. 1342) or 307(b) (33 U.S.C. 1317(b)) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., in effect on October 31, 1994.

(3) Equipment or machinery that contains regulated substances for operational purposes and that may include any of the following:

(A) Hydraulic lift tanks.

(B) Electrical equipment tanks.

(4) Any UST system whose capacity is one hundred ten (110) gallons or less, except an owner and operator with two (2) or more UST systems on-site whose individual capacities are one hundred ten (110) gallons or less are not excluded if the total capacity of all tanks on-site containing the same product exceeds one hundred ten (110) gallons.

(5) Any UST system that contains a de minimis concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) 329 IAC 9-2 through 329 IAC 9-4, 329 IAC 9-6, and 329 IAC 9-7 do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems.

(2) Any UST system containing radioactive material that is regulated under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., as amended, in effect on April 26, 1996.

(3) Any UST system that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A.

(4) Airport hydrant fuel distribution systems.

(5) UST systems with field-constructed tanks.

(d) 329 IAC 9-7 does not apply to any UST system that stores fuel solely for use by emergency power generators.

(e) Unless specified in the incorporated by reference documents incorporated in this article, the version of documents referenced in the incorporated by reference documents is the latest version that is in effect on the date of final adoption of the incorporated by reference documents into this article. (*Solid Waste Management Board; 329 IAC 9-1-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1062; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3683; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-1.1 Interim prohibition for deferred UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1.1. (a) No person shall install a UST system listed in section 1(c) of this rule for the purpose of storing regulated substances unless the UST system, whether of single-wall or double-wall construction, meets the following requirements:

(1) The UST system prevents releases due to corrosion or structural failure for the operational life of the UST system.

(2) The UST system is:

(A) cathodically protected against corrosion;

(B) constructed of noncorrodible material;

(C) steel clad with a noncorrodible material; or

(D) designed in a manner to prevent the release or threatened release of any stored substance.

(3) The UST system is constructed or lined with a material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), a UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause the UST system to have a release due to corrosion during its operating life. The owner and operator shall maintain records that demonstrate compliance with this subsection for the remaining life of the tank. (*Solid Waste Management Board; 329 IAC 9-1-1.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3684; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-2 Applicability of definitions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-11-2; IC 13-23

Sec. 2. In addition to the definitions in:

(1) IC 13-11-2-17(e);

(2) IC 13-11-2-73;

(3) IC 13-11-2-75;

(4) IC 13-11-2-84;

(5) IC 13-11-2-142;

(6) IC 13-11-2-160;

- (7) IC 13-11-2-163;
- (8) IC 13-11-2-172(d);
- (9) IC 13-11-2-240; and
- (10) IC 13-11-2-268;

the definitions in this rule apply throughout this article unless otherwise indicated by the text. (*Solid Waste Management Board; 329 IAC 9-1-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3684; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-3 “Aboveground release” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3. “Aboveground release” means any release to the surface of the land, surface water, or ground water. An aboveground release may include any of the following:

- (1) Releases from the aboveground portion of a UST system.
- (2) Aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(*Solid Waste Management Board; 329 IAC 9-1-3; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3684; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-4 “Agency” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. “Agency” means the department of environmental management, underground storage tank branch. This definition is not applicable under 329 IAC 9-8. (*Solid Waste Management Board; 329 IAC 9-1-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-5 “Ancillary equipment” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 5. “Ancillary equipment” means any device that may include any:

- (1) piping;
- (2) fittings;
- (3) flanges;
- (4) valves; or
- (5) pumps;

used to distribute, meter or control the flow of regulated substances to and from an underground storage tank. (*Solid Waste Management Board; 329 IAC 9-1-5; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-6 “Belowground release” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 6. “Belowground release” means any release to the subsurface of the land, ground water, or surface water. A belowground release may include any of the following:

- (1) Releases from the belowground portions of a UST system.
- (2) Belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(Solid Waste Management Board; 329 IAC 9-1-6; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-7 “Beneath the surface of the ground” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 7. “Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials. *(Solid Waste Management Board; 329 IAC 9-1-7; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-8 “Cathodic protection” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 8. “Cathodic protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system can be cathodically protected through the application of either galvanic anodes or impressed current. *(Solid Waste Management Board; 329 IAC 9-1-8; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-9 “Cathodic protection tester” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 9. “Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such person shall have education and experience in the following:

- (1) Soil resistivity.
- (2) Stray current.
- (3) Structure-to-soil potential.
- (4) Component electrical isolation measurements of buried metal piping and tank systems.

(Solid Waste Management Board; 329 IAC 9-1-9; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-10 “CERCLA” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 10. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. 9601, et seq., in effect on October 12, 1996. *(Solid Waste Management Board; 329 IAC 9-1-10; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-10.1 “Chemical of concern” or “COC” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 10.1. “Chemical of concern” or “COC” means the parameter to be analyzed for the possible contaminant. *(Solid Waste Management Board; 329 IAC 9-1-10.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3686; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SOLID WASTE MANAGEMENT BOARD

329 IAC 9-1-10.2 “Clean closure” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 10.2. “Clean closure” means a closure where:

(1) one (1) or more chemicals of concern (COC) are not detected in ground water, surface water, subsurface soil, or surface soil in an amount greater than or equal to the detection limits listed for the following:

(A) Soils analysis:

Soil Analysis

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Kerosene, gasoline	Total petroleum hydrocarbons (TPH)	GC/FID 8015-Modified (California) or GC/MS 8240/60 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 parts per million (ppm) (mg/kg)
Naphtha, diesel fuel	TPH	GC/FID 8015-Modified (California) or GC/MS 8270 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 ppm (mg/kg)
Waste oil (Waste oil is the same as “used oil” as defined at 329 IAC 13-2-19) (Soil contaminated from waste oil must be segregated from other contaminated soils excavated on-site)	TPH	418.1 IR in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW 846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 ppm (mg/kg)

Soil Analysis for Waste Oil

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Waste oil (Waste oil is the same as “used oil” as defined at 329 IAC 13-2-19) (Soil contaminated from waste oil must be segregated from other contaminated soils excavated on-site)	Volatile organic compounds and methyl-tertiary-butyl-ether	GC/PID 8020 or GC/MS 8240/60 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 parts per million (ppm) (mg/kg)
	Semivolatile organic compounds	GC/MS 8270 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 ppm (mg/kg)

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Polychlorinated biphenyls	GC/ECD 8080/8081 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	1 ppm (mg/kg)
Barium, cadmium, chromium (total), lead, mercury, nickel, and zinc	Applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	As set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(B) Ground water analysis:

Ground Water Analysis

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Kerosene, gasoline	Benzene, toluene, ethylbenzene, xylene, and methyl-tertiary-butyl-ether	GC/PID 8020 or GC/MS 8240/60 or GC/MS 524.2 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	5 parts per billion (ppb) (µg/L)
Naphtha, diesel fuel	Benzene, toluene, ethylbenzene, xylene	GC/PID 8020 or GC/MS 8240/60 or GC/MS 524.2 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	5 ppb (µg/L)
	Total semivolatile organic compounds	GC/MS 8270 or GC/MS 525 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	10 ppb (µg/L)
Waste oil (Waste oil is the same as "used oil" as defined at 329 IAC 13-2-19)	TPH	418.1 IR in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	1,000 ppb (µg/L)

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Ground Water Analysis for Waste Oil

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Waste oil (Waste oil is the same as "used oil" as defined at 329 IAC 13-2-19)	Volatile organic compounds and methyl-tertiary-butyl-ether	GC/PID 8020 or GC/MS 8240/60 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	5 parts per billion (ppb) (µg/L)
	Semivolatile organic compounds	GC/MS 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	10 ppb (µg/L)
	Polychlorinated biphenyls	GC/ECD 8080/8081 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	0.5 ppb (µg/L), except for Aroclor 1254 and 1260 that is 1 ppb (µg/L)
	Barium, cadmium, chromium (total), lead, mercury, nickel, and zinc	Applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	As set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(C) For hazardous substances, the detection limits are as set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Hazardous substance is specified by 329 IAC 9-1-25(1); or

(2) the commissioner approves other COC, analytical methods, and detection limits based on a specific site assessment. The analytical methods and detection limits must provide substantially equivalent protection to human health and the environment as provided in subdivision (1).

(Solid Waste Management Board; 329 IAC 9-1-10.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3686; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-11 "Commissioner" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-13-1-1; IC 13-23

Sec. 11. "Commissioner" means the commissioner of the department of environmental management as created under IC 13-13-1-1. *(Solid Waste Management Board; 329 IAC 9-1-11; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3688; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-12 “Compatible” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 12. “Compatible” means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the underground storage tank. *(Solid Waste Management Board; 329 IAC 9-1-12; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-13 “Connected piping” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 13. “Connected piping” means all underground piping, including:

- (1) valves;
- (2) elbows;
- (3) joints;
- (4) flanges; and
- (5) flexible connectors;

attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems should be allocated equally between them. *(Solid Waste Management Board; 329 IAC 9-1-13; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3688; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-14 “Consumptive use” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 14. “Consumptive use”, with respect to heating oil, means consumed on the premises. *(Solid Waste Management Board; 329 IAC 9-1-14; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-14.1 “Corrective action” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 14.1. “Corrective action” has the meaning set forth in 328 IAC 1-1-3 under rules adopted by the underground storage tank financial assurance board. *(Solid Waste Management Board; 329 IAC 9-1-14.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3688; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-15 “Corrosion expert” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23; IC 25-31-1

Sec. 15. “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall meet one (1) of the following requirements:

- (1) Be accredited or certified as being qualified by NACE International (formerly the National Association of Corrosion Engineers).
- (2) Be a registered professional engineer under IC 25-31-1 who has education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(Solid Waste Management Board; 329 IAC 9-1-15; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3689; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-16 “Dielectric material” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 16. “Dielectric material” means a material that does not conduct direct electrical current and includes the following:

- (1) Dielectric coatings are used to electrically isolate UST systems from the surrounding soils.
- (2) Dielectric bushings are used to electrically isolate portions of the UST system. A dielectric bushing may be used to electrically isolate a tank from piping.

(Solid Waste Management Board; 329 IAC 9-1-16; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3689; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-17 “Electrical equipment” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 17. “Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable. *(Solid Waste Management Board; 329 IAC 9-1-17; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-18 “Excavation zone” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 18. “Excavation zone” means the volume containing the tank system and backfill material bounded by the:

- (1) ground surface;
- (2) walls; and
- (3) floor of the pit and trenches;

into which the UST system is placed at the time of installation. *(Solid Waste Management Board; 329 IAC 9-1-18; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3689; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-19 “Existing tank system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 19. “Existing tank system” means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if the following have been completed:

- (1) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system.
- (2) Either:
 - (A) a continuous on-site physical construction or installation program has begun; or
 - (B) the owner or operator has entered into contractual obligations that cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(Solid Waste Management Board; 329 IAC 9-1-19; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3689; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-20 “Farm tank” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 20. “Farm tank” means a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, rangeland, and nurseries with growing operations. (*Solid Waste Management Board; 329 IAC 9-1-20; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-21 “Fire marshal” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 21. “Fire marshal” means the office of the state fire marshal, Indiana department of fire and building services. (*Solid Waste Management Board; 329 IAC 9-1-21; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-22 “Flow-through process tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 22. “Flow-through process tank” means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for any of the following:

- (1) The storage of materials prior to their introduction into the production process.
- (2) The storage of finished products or byproducts from the production process.

(*Solid Waste Management Board; 329 IAC 9-1-22; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-23 “Free product” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 23. “Free product” means a regulated substance that is present as a nonaqueous phase liquid. Free product usually refers to a liquid not dissolved in water. (*Solid Waste Management Board; 329 IAC 9-1-23; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-23.1 “Galvanic cathodic protection” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 23.1. “Galvanic cathodic protection” means a technique to prevent the corrosion of a metal surface by sacrificial protection to another metal that is more noble when electrically coupled in an electrolyte. (*Solid Waste Management Board; 329 IAC 9-1-23.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-23.2 “Galvanic cathodic protection system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 23.2. “Galvanic cathodic protection system” means a process to prevent the corrosion of a metal surface by sacrificial protection to another metal that is more noble when electrically coupled in an electrolyte. (*Solid Waste Management Board; 329*

IAC 9-1-23.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-24 “Gathering lines” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 24. “Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during any of the following:

- (1) Oil or gas production operations.
- (2) Oil or gas gathering operations.

(Solid Waste Management Board; 329 IAC 9-1-24; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-24.1 “Geologically susceptible area” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 24.1. “Geologically susceptible area” means an area that includes karst terrains or other fractured rock geology. *(Solid Waste Management Board; 329 IAC 9-1-24.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-24.2 “Ground water” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 24.2. “Ground water” has the meaning set forth in 327 IAC 2-1-9 under rules adopted by the water pollution control board. *(Solid Waste Management Board; 329 IAC 9-1-24.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-25 “Hazardous substance UST system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 25. “Hazardous substance UST system” means a UST system that contains any of the following:

- (1) A hazardous substance that is:
 - (A) defined in Section 101(14) of CERCLA (42 U.S.C. 9601(14)); and
 - (B) not regulated as a hazardous waste under 329 IAC 3.1.
- (2) Any mixture of such substances and petroleum and which is not a petroleum UST system.

(Solid Waste Management Board; 329 IAC 9-1-25; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-26 “Heating oil” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 26. “Heating oil” means:

- (1) petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil;
- (2) other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and
- (3) other fuels when used as substitutes for one (1) of the fuel oils listed in this section.

Heating oil is typically used in the operation of heating equipment, boilers, or furnaces. *(Solid Waste Management Board; 329 IAC 9-1-26; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-27 “Hydraulic lift tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 27. “Hydraulic lift tank” means a tank that holds hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate any of the following:

- (1) Lifts.
- (2) Elevators.
- (3) Other similar devices.

(Solid Waste Management Board; 329 IAC 9-1-27; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-27.1 “Impressed current cathodic protection” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 27.1. “Impressed current cathodic protection” means a technique to prevent corrosion of a metal surface by using an electric current supplied by a device employing a power source that is external to the electrode system. *(Solid Waste Management Board; 329 IAC 9-1-27.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-27.2 “Impressed current cathodic protection system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 27.2. “Impressed current cathodic protection system” means a process to prevent corrosion of a metal surface by using an electric current supplied by a device employing a power source that is external to the electrode system. *(Solid Waste Management Board; 329 IAC 9-1-27.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-27.3 “In-place closure” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 27.3. “In-place closure” means a closure where the underground storage tank is not removed from the ground. *(Solid Waste Management Board; 329 IAC 9-1-27.3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-27.4 “Karst terrains” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 27.4. “Karst terrains” means an area where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present to karst terrains include any of the following:

- (1) Sinkholes.
- (2) Sinking streams.
- (3) Caves.
- (4) Large springs.
- (5) Blind valleys.

(Solid Waste Management Board; 329 IAC 9-1-27.4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-28 “Liquid trap” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 28. “Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids. These liquid traps may complete any of the following:

- (1) Temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream.
- (2) Collect and separate liquids from a gas stream.

(Solid Waste Management Board; 329 IAC 9-1-28; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-29 “Maintenance” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 29. “Maintenance” means the normal operational upkeep to prevent a UST system from releasing product. *(Solid Waste Management Board; 329 IAC 9-1-29; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-29.1 “Modified closure” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23

Sec. 29.1. “Modified closure” means a process to complete the UST system closure by removing contaminated soil, with a maximum soil excavation of one thousand (1,000) cubic yards, so that the chemical of concern (COC) in the remaining soil measures less than the clean-up objective concentration as follows:

Contaminant	Clean-up Objective
Petroleum products other than waste oil (Waste oil is the same as “used oil” as defined at 329 IAC 13-2-19)	The clean-up objective must be determined by complying with IC 13-12-3-2.
Waste oil (Waste oil is the same as “used oil” as defined at 329 IAC 13-2-19)	The clean-up objective must be determined by complying with IC 13-12-3-2.
Hazardous substance and other COC (Hazardous substance is specified by 329 IAC 9-1-25(1))	The clean-up objective must be determined by complying with IC 13-12-3-2.

(Solid Waste Management Board; 329 IAC 9-1-29.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-30 “Motor fuel” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 30. “Motor fuel” means petroleum or a petroleum-based substance that is:

- (1) motor gasoline;
- (2) aviation gasoline;
- (3) No. 1 diesel fuel;
- (4) No. 2 diesel fuel; or
- (5) any grade of gasohol;

and is typically used in the operation of a motor engine. *(Solid Waste Management Board; 329 IAC 9-1-30; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-31 “New tank system” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 31. “New tank system” means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (*Solid Waste Management Board; 329 IAC 9-1-31; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-32 “Noncommercial purposes” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 32. “Noncommercial purposes”, with respect to motor fuel, means not for resale. (*Solid Waste Management Board; 329 IAC 9-1-32; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-33 “On the premises where stored” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 33. “On the premises where stored”, with respect to heating oil, means a UST system located on the same property where the stored heating oil is used. (*Solid Waste Management Board; 329 IAC 9-1-33; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-34 “Operational life” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 34. “Operational life” means the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under 329 IAC 9-6. (*Solid Waste Management Board; 329 IAC 9-1-34; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-34.1 “Operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-148; IC 13-23

Sec. 34.1. “Operator” has the meaning as set forth in IC 13-11-2-148(d). (*Solid Waste Management Board; 329 IAC 9-1-34.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-35 “Overfill release” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 35. “Overfill release” means a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment. (*Solid Waste Management Board; 329 IAC 9-1-35; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-35.1 “Owner” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-150; IC 13-23

Sec. 35.1. “Owner” has the meaning as set forth in IC 13-11-2-150. (*Solid Waste Management Board; 329 IAC 9-1-35.1; filed*

Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-35.2 “Person” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-11-2-158; IC 13-23

Sec. 35.2. “Person” has the meaning as set forth in IC 13-11-2-158(d). *(Solid Waste Management Board; 329 IAC 9-1-35.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-36 “Petroleum UST system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 36. “Petroleum UST system” means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing any of the following:

- (1) Motor fuels.
- (2) Jet fuels.
- (3) Distillate fuel oils.
- (4) Residual fuel oils.
- (5) Lubricants.
- (6) Petroleum solvents.
- (7) Used oils.

(Solid Waste Management Board; 329 IAC 9-1-36; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-37 “Pipe” or “piping” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13

Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 37. “Pipe” or “piping” means a hollow cylinder or tubular conduit that is constructed of nonearthen materials. *(Solid Waste Management Board; 329 IAC 9-1-37; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-38 “Pipeline facilities” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 38. “Pipeline facilities”, including gathering lines, means the following:

- (1) New and existing pipe rights-of-way.
- (2) Any associated equipment, facilities, or buildings.

(Solid Waste Management Board; 329 IAC 9-1-38; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-38.1 “Product” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-11-2-183; IC 13-23

Sec. 38.1. “Product” means regulated substance. *(Solid Waste Management Board; 329 IAC 9-1-38.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-38.2 “Regulated substance” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-183; IC 13-23

Sec. 38.2. “Regulated substance” has the meaning as set forth in IC 13-11-2-183. *(Solid Waste Management Board; 329 IAC 9-1-38.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-38.3 “Release” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-184; IC 13-23

Sec. 38.3. “Release” has the meaning as set forth in IC 13-11-2-184(a). *(Solid Waste Management Board; 329 IAC 9-1-38.3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-39 “Release detection” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 39. “Release detection” means determining whether a release of a regulated substance has occurred from the UST system into any of the following:

(1) The environment.

(2) The interstitial space between the UST system and its secondary barrier or secondary containment around it.

(Solid Waste Management Board; 329 IAC 9-1-39; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-40 “Repair” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 40. “Repair” means to restore a tank or UST system component that has caused a release of product from the UST system. *(Solid Waste Management Board; 329 IAC 9-1-40; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-41 “Residential tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 41. “Residential tank” means a tank located on property used primarily for dwelling purposes. *(Solid Waste Management Board; 329 IAC 9-1-41; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-41.1 “SARA” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 41.1. “SARA” means the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. 9601, et seq., in effect on September 30, 1996, that amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. *(Solid Waste Management Board; 329 IAC 9-1-41.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-1-42 “Septic tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 42. “Septic tank” means a water tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil. Settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility. (*Solid Waste Management Board; 329 IAC 9-1-42; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3693; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-42.1 “Source area” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 42.1. “Source area” means the area with the highest:

- (1) suspected; or
- (2) actual;

soil contamination levels. (*Solid Waste Management Board; 329 IAC 9-1-42.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-43 “Stormwater or wastewater collection system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 43. “Stormwater or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of:

- (1) surface water run-off resulting from precipitation; or
- (2) domestic, commercial, or industrial wastewater;

to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance. (*Solid Waste Management Board; 329 IAC 9-1-43; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-44 “Surface impoundment” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 44. “Surface impoundment” means a:

- (1) natural topographic depression;
- (2) manmade excavation; or
- (3) diked area formed primarily of earthen materials that may be lined with manmade materials;

that is not an injection well. (*Solid Waste Management Board; 329 IAC 9-1-44; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-45 “Tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 45. “Tank” means a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials that may include any:

- (1) concrete;
- (2) steel; or

(3) plastic;
that provides structural support. (*Solid Waste Management Board; 329 IAC 9-1-45; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-46 “Underground area” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 46. “Underground area” means an underground room that may include any:

- (1) basement;
- (2) cellar;
- (3) shaft; or
- (4) vault;

that provides enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor. (*Solid Waste Management Board; 329 IAC 9-1-46; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-47 “Underground release” defined

Authority: IC 13-7-7-1; IC 13-7-20-12; IC 13-7-20-13
Affected: IC 13-7-20-12; IC 13-7-20-13

Sec. 47. “Underground release” means any belowground release. (*Solid Waste Management Board; 329 IAC 9-1-47; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-47.1 “Underground storage tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-241; IC 13-23

Sec. 47.1. “Underground storage tank” has the meaning as set forth in IC 13-11-2-241. (*Solid Waste Management Board; 329 IAC 9-1-47.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-48 “Upgrade” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 48. “Upgrade” means the addition or retrofit of a system that may include any:

- (1) cathodic protection;
- (2) lining; or
- (3) spill and overfill controls;

to improve the ability of a UST system to prevent the release of product. (*Solid Waste Management Board; 329 IAC 9-1-48; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; errata, 16 IR 1955; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-1-49 “UST system” or “tank system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 49. “UST system” or “tank system” means the following:

- (1) Underground storage tank.
- (2) Connected underground piping.
- (3) Underground ancillary equipment.

(4) Containment system, if any.

(Solid Waste Management Board; 329 IAC 9-1-49; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3695; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-50 “Wastewater treatment tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 50. “Wastewater treatment tank” means a tank that is designed to receive and treat an influent wastewater through:

- (1) physical;
- (2) chemical; or
- (3) biological methods.

(Solid Waste Management Board; 329 IAC 9-1-50; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3695; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-1-51 References to federal laws (Repealed)

Sec. 51. *(Repealed by Solid Waste Management Board; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761)*

329 IAC 9-1-52 “Wellhead protection area” or “WHPA” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 52. “Wellhead protection area” or “WHPA” has the meaning set forth in 327 IAC 8-4.1-1(27) under rules adopted by the water pollution control board. *(Solid Waste Management Board; 329 IAC 9-1-52; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3695; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 2. Performance Standards

329 IAC 9-2-1 New UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23; IC 25-31-1

Sec. 1. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(1) Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion as specified under one (1) of the following:

(A) The tank is constructed of fiberglass-reinforced plastic and meets one (1) of the following:

(i) Underwriters Laboratories Standard 1316, “Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol, and Alcohol-Gasoline Mixtures”, 1994, Underwriters Laboratories Inc., 333 Pflugsten Road, Northbrook, Illinois 60062.

(ii) Underwriters Laboratories of Canada CAN4-S615-M83, “Standard for Reinforced Plastic Underground Tanks for Petroleum Products”, 1983, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.

(iii) ASTM D4021-86, “Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks”, revised 1992, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.

(B) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material and is cathodically protected.

(ii) Field-installed impressed current systems are designed by a corrosion expert to allow determination of current operating status under 329 IAC 9-3.1-2(3).

- (iii) Cathodic protection systems are operated and maintained under 329 IAC 9-3.1-2.
- (iv) The tank complies with one (1) or more of the following:
 - (AA) Steel Tank Institute “sti-P₃® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks”, STI-P3-98, revised 1998, Steel Tank Association, 570 Oakwood Road, Lake Zurich, Illinois 60047.
 - (BB) Underwriter Laboratories Standard 1746, “External Corrosion Protection Systems for Steel Underground Storage Tanks”, 1993, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
 - (CC) Underwriters Laboratories of Canada CAN4-S603-M85, “Standards for Steel Underground Tanks for Flammable and Combustible Liquids”, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
 - (DD) Underwriter Laboratories of Canada CAN4-603.1-M85, “Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids”, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
 - (EE) Underwriters Laboratories of Canada CAN4-S631-M84, “Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems”, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
 - (FF) NACE International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, “Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”, revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
 - (GG) Underwriters Laboratories Standard 58, “Steel Underground Tanks for Flammable and Combustible Liquids”, 1986, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
- (C) The tank is constructed of a steel-fiberglass-reinforced-plastic composite and complies with one (1) or more of the following:
 - (i) Underwriters Laboratories Standard 1746, “External Corrosion Protection Systems for Steel Underground Storage Tanks”, 1993, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
 - (ii) Association for Composite Tanks ACT-100®, “Specification for External Corrosion Protection of FRP Composite Steel USTs, F894-98,” revised 1998, Steel Tank Association, 570 Oakwood Road, Lake Zurich, Illinois 60047.
- (D) The tank is constructed of metal without additional corrosion protection measures provided that the following requirements are completed:
 - (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.
 - (ii) The owner and operator shall demonstrate that soil resistivity in an installation location is twelve thousand (12,000) ohms per centimeter or greater by using one (1) of the following:
 - (AA) ASTM Standard G57-78, “Standard Test Method for Field Measurement of Soil Resistivity Using the Wenner Four-Electrode Method”, revised 1978, reapproved 1984. American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.
 - (BB) A standard approved by the commissioner that exhibits the same or greater degree of reliability and accuracy as ASTM Standard G57-78 cited in subitem (AA).
 - (iii) The owner and operator shall maintain records that demonstrate compliance with items (i) and (ii) for the remaining life of the tank.
- (E) The tank construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than clauses (A) through (D).
- (2) The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion as specified under one (1) of the following:
 - (A) The piping is constructed of fiberglass-reinforced plastic and complies with one (1) or more of the following:
 - (i) Underwriters Laboratories Standard 971, “Nonmetallic Underground Piping for Flammable Liquids”, 1995, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

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- (ii) Underwriters Laboratories Standard 567, "Pipe Connectors for Petroleum Products and LP Gas", Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
 - (iii) Underwriters Laboratories of Canada Subject C107C-M1984 "Guide for Glass Fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids", Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
 - (iv) Underwriters Laboratories of Canada Standard CAN4-S633-M84, "Flexible Underground Hose Connectors", Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
- (B) The piping is constructed of steel and cathodically protected in the following manner:
- (i) The piping is coated with a suitable dielectric material and is cathodically protected.
 - (ii) Field-installed impressed current systems are designed by a corrosion expert to allow determination of current operating status under 329 IAC 9-3.1-2(3).
 - (iii) Cathodic protection systems are operated and maintained under 329 IAC 9-3.1-2.
 - (iv) The piping system meets one (1) or more of the following:
 - (AA) Article 79, "Flammable and Combustible Liquids", of the 1998 Indiana Fire Code under rules of the fire prevention and building safety commission at 675 IAC 22-2.2.
 - (BB) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fifth Edition, March 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (CC) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (DD) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", 1992 Edition, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
- (C) The piping is constructed of metal without additional corrosion protection measures provided that the following requirements are completed:
- (i) The piping is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.
 - (ii) The owner and operator shall demonstrate that soil resistivity in an installation location is twelve thousand (12,000) ohms per centimeter or greater by using one (1) of the following:
 - (AA) ASTM Standard G57-78, "Standard Test Method for Field Measurement of Soil Resistivity Using the Wenner Four-Electrode Method", revised 1978, reapproved 1984. American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.
 - (BB) A standard approved by the commissioner that exhibits the same or greater degree of reliability and accuracy as ASTM Standard G57-78 cited in subitem (AA).
 - (iii) The piping complies with one (1) or more of the following:
 - (AA) Article 79, "Flammable and Combustible Liquids", of the 1998 Indiana Fire Code under rules of the fire prevention and building safety commission at 675 IAC 22-2.2.
 - (BB) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", 1992 Edition, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
 - (iv) The owner and operator shall maintain records that demonstrate compliance with items (i) and (ii) for the remaining life of the piping.
- (D) The piping is equipped with secondary containment that includes one (1) of the following:
- (i) Double-walled piping that consists of an outer wall constructed of a dielectric material.
 - (ii) Vaulted piping.
- (E) The piping construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than clauses (A) through (D).
- (3) The following spill and overfill requirements must be completed:
- (A) Except as provided in clause (B), the owner and operator shall use the following spill and overfill prevention

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equipment to prevent spilling and overfilling associated with product transfer to the UST system:

- (i) Spill prevention equipment that prevents the release of product to the environment when the transfer hose is detached from the fill pipe as one (1) of the following:
 - (AA) Minimum five (5) gallon spill catchment basin with drain to tank.
 - (BB) Minimum twenty-five (25) gallon spill catchment basin without drain to tank.
 - (ii) Overfill prevention equipment that completes one (1) of the following:
 - (AA) Automatically shuts off flow into the tank when the tank is no more than ninety-five percent (95%) full.
 - (BB) Alerts the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high level alarm.
 - (CC) Restricts flow thirty (30) minutes prior to overfilling, alerts the transfer operator with a high level alarm one (1) minute before overfilling, or automatically shuts off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.
 - (B) The owner and operator are not required to use the spill and overfill prevention equipment specified in clause (A) if one (1) of the following is completed:
 - (i) Alternative equipment is used that is determined by the commissioner to be no less protective of human health and the environment than the equipment specified in clause (A).
 - (ii) The UST system is filled by transfers of no more than twenty-five (25) gallons at one (1) time.
 - (C) A drop tube for deliveries must extend to within one (1) foot of the tank bottom.
- (4) All tanks and piping must be installed properly in accordance with one (1) or more of the following:
- (A) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fifth Edition, March 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (B) Petroleum Equipment Institute Publication PEI/RP100-97, "Recommended Practices for Installation of Underground Liquid Storage Systems", revised 1997, Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380.
 - (C) American National Standards Institute Standard ANSI/ASME B31.3-1996, "Process Piping", 1996, American National Standards Institute, 11 West 42nd Street, New York, New York 10036. ASME B31.3a-1996, addenda to ASME B31.3-1996 Edition, Process Piping, An American National Standard, The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. ASME B31.3b-1997, addenda to ASME B31.3-1996 Edition, Process Piping, An American National Standard, the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
 - (D) American National Standards Institute Standard ANSI/ASME B31.4-1992, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols", 1992, American National Standards Institute, 11 West 42nd Street, New York, New York 10036. ASME B31.4a, addenda to ASME B31.4-1992 Edition, Pipeline Transportation Systems For Liquid Hydrocarbons and Other Liquids, An American National Standard, The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
- (5) The owner and operator shall ensure the following:
- (A) The installer has been certified by the office of the state fire marshal under rules of the fire prevention and building safety commission at 675 IAC 12-12.
 - (B) One (1) or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subdivision (4):
 - (i) The installer has been certified by the tank and piping manufacturers.
 - (ii) The installation has been inspected and certified by a registered professional engineer under IC 25-31-1 with education and experience in UST system installation.
 - (iii) The installation has been inspected and approved by one (1) of the following:
 - (AA) The agency.
 - (BB) The office of the state fire marshal.
 - (iv) The owner and operator have complied with another method for ensuring compliance with subdivision (4) that is determined by the commissioner to be no less protective of human health and the environment.
 - (C) The owner and operator shall provide a certification of compliance on the underground storage tank notification form under section 2 of this rule.

(Solid Waste Management Board; 329 IAC 9-2-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR

3695; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-2-1.1 New UST systems within a one (1) year time of travel to a community public water supply well

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 1.1. (a) This section applies to a new UST system that is installed within a one (1) year time of travel (TOT) to a community public water supply system (CPWSS) well as defined in rules of the water pollution control board at 327 IAC 8-4.1-1(5) and where the appropriate person has been provided notice of the establishment of the WPHA as provided in IC 13-18-17-6(d). The one (1) year TOT as defined in rules of the water pollution control board at 327 IAC 8-4.1-1(25) is one (1) of the following:

(1) The one (1) year TOT established as part of a wellhead protection area (WHPA) that is delineated and approved in accordance with rules of the water pollution control board at 327 IAC 8-4.1.

(2) A fixed radius of one thousand five hundred (1,500) feet from the CPWSS well if, at the time of installation of the UST system, there has not been a one (1) year TOT established for that CPWSS as part of a WHPA that is delineated and approved in accordance with rules of the water pollution control board at 327 IAC 8-4.1.

(b) A new UST system that is installed in a one (1) year TOT under subsection (a) must meet the following requirements:

(1) An underground storage tank that is installed in a one (1) year TOT must be constructed with one (1) of the following secondary containment systems:

(A) A double-walled tank with a monitoring device that:

(i) must be located in the interstitial space between the walls; and

(ii) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

(B) A secondary barrier system that meets the following requirements:

(i) The secondary barrier around the underground storage tank consists of artificially constructed material that is sufficiently thick and impermeable (no more than 1×10^{-6} centimeters per second for water) to direct a release to an observation well and allow its detection.

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

(iii) For cathodically protected tanks, the secondary barrier must be installed so that the secondary barrier does not interfere with the proper operation of the cathodic protection system.

(iv) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain unless the barrier and observation well designs are for use under such conditions.

(v) For a single-walled tank, an observation well that meets the following requirements must be located in the excavation zone of the tank:

(AA) The observation well must be clearly marked and secured to prevent damage and unauthorized access and tampering.

(BB) The slotted portion of the observation well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the accumulated water into the well under both high and low water conditions.

(CC) The observation well must be sealed from the ground surface to the top of the filter pack.

(DD) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth ($\frac{1}{8}$) of an inch of free product on top of the accumulated water in the observation well.

(EE) At least one (1) observation well must be placed downgradient of the underground storage tank or at the lowest point of the underground storage tank excavation zone.

(vi) The observation well must be monitored at least one (1) time every thirty (30) days for a release.

(vii) The secondary barrier system is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

(C) Other methods approved by the commissioner for secondary containment that provide substantially equal environmental protection.

(2) Piping installation in a one (1) year TOT must be constructed with one (1) of the following secondary containment systems:

- (A) Double-walled piping with a monitoring device that:
 - (i) must be located in the interstitial space between the walls; and
 - (ii) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
- (B) A secondary barrier system that meets the following requirements:
 - (i) The secondary barrier around the piping consists of artificially constructed material that is sufficiently thick and impermeable (no more than 1×10^{-6} centimeters per second for water) to direct a release to an observation well and allow its detection.
 - (ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.
 - (iii) For cathodically protected piping, the secondary barrier must be installed so that the secondary barrier does not interfere with the proper operation of the cathodic protection system.
 - (iv) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain unless the barrier and observation well designs are for use under such conditions.
 - (v) For single-walled piping, an observation well that meets the following requirements must be located in the excavation zone of the piping:
 - (AA) The observation well must be clearly marked and secured to prevent damage and unauthorized access and tampering.
 - (BB) The slotted portion of the observation well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the accumulated water into the well under both high and low water conditions.
 - (CC) The observation well must be sealed from the ground surface to the top of the filter pack.
 - (DD) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth ($\frac{1}{8}$) of an inch of free product on top of the accumulated water in the observation well.
 - (EE) At least one (1) observation well must be placed downgradient of the piping or at the lowest point of the piping excavation zone.
 - (vi) The observation well must be monitored at least one (1) time every thirty (30) days for a release.
 - (vii) The secondary barrier system is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
- (C) Other methods approved by the commissioner for secondary containment that provide substantially equal environmental protection.

(Solid Waste Management Board; 329 IAC 9-2-1.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3698; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-2-2 Notification requirements

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-3

Sec. 2. (a) Any owner who brings a UST system into use shall, within thirty (30) days of bringing such tank into use, submit notice to the agency to register the tank system using a form provided by the agency for this notification.

(b) An owner required to submit notice under subsection (a) shall provide notice for each tank the owner owns. The owner may provide notice for several tanks at one (1) location using one (1) form. An owner with tanks located in more than one (1) place of operation shall submit a separate notification form for each separate place of operation.

(c) An owner required to submit notice under subsection (a) shall provide all the information required by the form provided by the agency for each tank for which notice is submitted.

(d) All owners and operators of new UST systems shall certify, on each notification form submitted with original signature in ink, compliance with the following requirements:

- (1) Installation of all tanks and piping under section 1(5) of this rule.
- (2) Cathodic protection of steel tanks and piping under section 1(1) of this rule and section 1(2) of this rule.
- (3) Release detection under 329 IAC 9-7-2 and 329 IAC 9-7-3.

(4) Financial responsibility under 329 IAC 9-8.

(e) All owners and operators of UST systems shall ensure that whoever performs tank system installations, testing, upgrades, closures, removals, and change-in-service is certified by the office of the state fire marshal. The certified person who performs the work shall certify, by original signature in ink on the notification form provided by the agency, that the work performed complies with methods specified by section 1(4) of this rule.

(f) All owners and operators of UST systems who upgrade the tank system to meet upgrade requirements under 329 IAC 9-2.1 shall, within thirty (30) days of completing the upgrade, submit notice of the upgrade to the agency as required by subsection (a).

(g) All owners and operators of UST systems who:

(1) temporarily close a tank system under 329 IAC 9-6-5; or

(2) permanently close or perform a change-in-service on a tank system under 329 IAC 9-6-1;

shall, within thirty (30) days of completing such action, submit notice of this action to the agency as required by subsection (a).

(h) All owners and operators of UST systems who install a method of release detection under 329 IAC 9-7-2 and 329 IAC 9-7-3 shall, within thirty (30) days of completing such action, submit notice of this action to the agency as required by subsection (a).

(i) Any person who sells a facility with a regulated underground storage tank that:

(1) is being used as a UST system; or

(2) will be used as a UST system;

shall notify the purchaser of such tank of the owner's obligation to submit notice under subsection (a).

(j) An owner and operator of a UST system that is:

(1) in the ground on or after May 8, 1986; and

(2) not taken out of operational life on or before January 1, 1974;

shall notify the agency of the service status of the UST system under 42 U.S.C. 6991a of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996, on a form provided by the agency for this notification. (*Solid Waste Management Board; 329 IAC 9-2-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3699; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 2.1. Upgrading of Existing UST Systems

329 IAC 9-2.1-1 Upgrading of existing UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-3

Sec. 1. (a) All existing UST systems shall comply with one (1) of the following requirements no later than December 22, 1998:

(1) New UST system performance standards under 329 IAC 9-2-1.

(2) The upgrading requirements under subsections (b) through (d).

(3) Closure requirements under 329 IAC 9-6, including applicable requirements for corrective action under 329 IAC 9-5.

(b) A steel tank must be upgraded to meet one (1) of the following requirements:

(1) A tank is upgraded by cathodic protection and the cathodic protection system meets the requirements of 329 IAC 9-2-1(1)(B)(ii) and 329 IAC 9-2-1(1)(B)(iii), and the integrity of the tank is ensured using one (1) of the following methods:

(A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system.

(B) The tank has been installed for less than ten (10) years and is monitored monthly for releases under 329 IAC 9-7-4(4) through 329 IAC 9-7-4(8).

(C) The tank has been installed for less than ten (10) years and is assessed for corrosion holes by conducting two (2) tightness tests under 329 IAC 9-7-4(3):

(i) the first tightness test must be conducted prior to installing the cathodic protection system; and

(ii) the second tightness test must be conducted between three (3) months and six (6) months following the first operation of the cathodic protection system.

(D) The tank is assessed for corrosion holes by a method that is determined by the commissioner to prevent releases in a manner that is no less protective of human health and the environment than established in clauses (A) through (C).

(2) A tank is upgraded by internal lining and the following requirements are completed:

- (A) The lining is installed under 329 IAC 9-3.1-4.
- (B) Within one (1) year after lining and every five (5) years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.
- (C) The tank may be lined one (1) time during the service life to meet the upgrading requirements of this subsection.
- (3) A tank is upgraded by both internal lining and cathodic protection, and the following requirements are completed:
 - (A) The lining is installed under 329 IAC 9-3.1-4.
 - (B) The cathodic protection system meets the requirements of 329 IAC 9-2-1(1)(B)(ii) and 329 IAC 9-2-1(1)(B)(iii).
- (4) A tank is upgraded by a method that is determined by the commissioner to be no less protective of human health and the environment than the methods specified in subdivisions (1) through (3).
- (5) The tank must comply with one (1) or more of the following:
 - (A) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", Fourth Edition, October 1997, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (B) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
 - (C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (D) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection", revised 1991, National Leak Prevention Association, Route 2, Box 106A, Falmouth, Kentucky 41040.
- (c) Metal piping that routinely contains regulated substances and is in contact with the ground must meet the following:
 - (1) Be cathodically protected in accordance with one (1) or more of the following:
 - (A) Article 79, "Flammable and Combustible Liquids", of the 1998 Indiana Fire Code, 675 IAC 22-2.2.
 - (B) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fifth Edition, March 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (D) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", 1992 Edition, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
 - (2) Meet the requirements of 329 IAC 9-2-1(2)(B)(ii) and 329 IAC 9-2-1(2)(B)(iii).
 - (d) All existing UST systems shall comply with the new UST system spill and overfill prevention equipment requirements under 329 IAC 9-2-1(3) and 329 IAC 9-3.1-1 to prevent spilling and overfilling associated with product transfer to the UST system.
 - (e) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal. (*Solid Waste Management Board; 329 IAC 9-2.1-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3700*)

Rule 3. Reporting and Record Keeping

329 IAC 9-3-1 Reporting and record keeping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1. (a) The owner and operator of a UST system shall cooperate fully with inspections, monitoring, and testing conducted by the agency, as well as requests for document submission, testing, and monitoring by the owner or operator under Section 9005 (42 U.S.C. 6991d) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996.

(b) The owner and operator shall submit the following information to the agency:

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- (1) Notification for all UST systems under 329 IAC 9-2-2 that includes:
 - (A) certification of installation for new UST systems under 329 IAC 9-2-1(5); and
 - (B) locational information within an accuracy of 1:24,000, plus or minus forty (40) feet, or plus or minus twelve and two-tenths (12.2) meters in any of the following formats, if known:
 - (i) Universal transverse mercator (UTM) coordinates.
 - (ii) Latitude and longitude coordinates.
 - (iii) UTM coordinates and latitude and longitude coordinates.
- (2) Reports of all releases, including:
 - (A) suspected releases under 329 IAC 9-4-1;
 - (B) spills and overfills under 329 IAC 9-4-4; and
 - (C) confirmed releases under 329 IAC 9-5-2.
- (3) Corrective actions planned or taken, including:
 - (A) free product removal under 329 IAC 9-5-3.1;
 - (B) initial abatement measures under 329 IAC 9-5-4.1;
 - (C) initial site characterization under 329 IAC 9-5-5.1;
 - (D) investigation of soil and ground water cleanup under 329 IAC 9-5-6; and
 - (E) corrective action plan under 329 IAC 9-5-7.
- (4) A notification upon completion of all upgrade activities under 329 IAC 9-2.1.
- (5) A notification before permanent closure or change-in-service under 329 IAC 9-6-1.
- (6) A notification upon completion of:
 - (A) temporary closure under 329 IAC 9-6-5; or
 - (B) permanent closure or change-in-service under 329 IAC 9-6-1 and 329 IAC 9-6-2.
- (7) A notification upon completion of the installation of a method of release detection under 329 IAC 9-7-2 and 329 IAC 9-7-3.
- (8) Results of the site investigation conducted at permanent closure or change-in-service under 329 IAC 9-6-4.
- (9) Documentation supporting the suitability of the underground storage tank to be upgraded with cathodic protection. The documentation must be submitted within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(1). The documentation must include a signed affidavit from the corrosion expert who designed the field-installed cathodic protection system.
- (10) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining. The documentation must be submitted within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(2).
- (11) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining combined with cathodic protection. The documentation must be submitted within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(3). The documentation also must include the following:
 - (A) A report of the condition of the underground storage tank prior to lining that includes the following:
 - (i) Diagram showing the location and size of any repair necessary to the interior of the underground storage tank prior to lining.
 - (ii) Diagram showing the location and size of any repair necessary to the exterior of the underground storage tank prior to cathodic protection.
 - (iii) Documentation showing the tank has met both thickness and tank deflection criteria specified in the publications for upgrades under clause (B).
 - (B) The suitability of the tank for lining must meet the following requirements:
 - (i) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", Fourth Edition, October 1997, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (ii) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
 - (iii) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
- (12) Documentation of operation and maintenance of corrosion protection equipment under 329 IAC 9-3.1-2. The results of

the postinstallation cathodic protection:

- (A) test for a galvanic cathodic protection system; and
- (B) inspection for an impressed current cathodic protection system;

must be submitted within thirty (30) days after the test or inspection is completed for a new UST system and an upgraded UST system.

(13) Documentation supporting the suitability of the excavation zone for the proper function of:

- (A) vapor observation wells under 329 IAC 9-7-4(5); and
- (B) ground water observation wells under 329 IAC 9-7-4(6);

as a method of release detection. The documentation must be submitted within thirty (30) days after the observation wells installation is completed for a new UST system and an upgraded UST system.

(14) Documentation supporting the suitability of the excavation zone to support a secondary barrier in the excavation zone as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be submitted within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(15) Documentation supporting the suitability of the secondary barrier as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be submitted within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(c) The owner and operator shall maintain the following information:

(1) Documentation of operation and maintenance of corrosion protection equipment under 329 IAC 9-3.1-2. The results of the postinstallation cathodic protection:

- (A) test for a galvanic cathodic protection system; and
- (B) inspection for an impressed current cathodic protection system;

must be maintained under subsection (d) within thirty (30) days after the test or inspection is completed for a new UST system and an upgraded UST system.

(2) Documentation of UST system repairs under 329 IAC 9-3.1-4(b)(6).

(3) Documentation of compliance with release detection requirements under 329 IAC 9-7-6.

(4) Results of the site investigation conducted at permanent closure under 329 IAC 9-6-4.

(5) Documentation supporting the suitability of the underground storage tank to be upgraded with cathodic protection. The documentation must be maintained under subsection (d) within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(1). The documentation must include a signed affidavit from the corrosion expert who designed the field-installed cathodic protection system.

(6) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining. The documentation must be maintained under subsection (d) within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(2).

(7) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining combined with cathodic protection. The documentation must be maintained under subsection (d) within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(3). The documentation also must include the following:

- (A) A report of the condition of the underground storage tank prior to lining that includes the following:
 - (i) Diagram showing the location and size of any repair necessary to the interior of the underground storage tank prior to lining.
 - (ii) Diagram showing the location and size of any repair necessary to the exterior of the underground storage tank prior to cathodic protection.
 - (iii) Documentation showing the tank has met both thickness and tank deflection criteria specified in the publications for upgrades under clause (B).
- (B) A signed certification by a corrosion expert indicating the suitability of the tank for lining under the following:
 - (i) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", Fourth Edition, October 1997, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (ii) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
 - (iii) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW,

Washington, D.C. 20005-4070.

(8) Documentation supporting the suitability of the excavation zone for the proper function of:

- (A) vapor observation wells under 329 IAC 9-7-4(5); and
- (B) ground water observation wells under 329 IAC 9-7-4(6);

as a method of release detection. The documentation must be maintained under subsection (d) within thirty (30) days after the observation wells installation is completed for a new UST system and an upgraded UST system.

(9) Documentation supporting the suitability of the excavation zone to support a secondary barrier in the excavation zone as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be maintained under subsection (d) within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(10) Documentation supporting the suitability of the secondary barrier as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be maintained under subsection (d) within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(11) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used under 329 IAC 9-2-1(1)(D) or 329 IAC 9-2-1(2)(C). The documentation must be maintained under subsection (d) within thirty (30) days after the analysis is completed.

(d) The owner and operator shall maintain the records required:

- (1) at the underground storage tank site and immediately available for inspection by the agency;
- (2) at a readily available alternative site and be provided for inspection to the agency upon request; or
- (3) in the case of permanent closure records required under 329 IAC 9-6-4, the owner and operator are also provided with the additional alternative of mailing closure records to the agency if they cannot be kept at the site or an alternative site as indicated in this subsection.

(Solid Waste Management Board; 329 IAC 9-3-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1069; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3701; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 3.1. General Operating Requirements

329 IAC 9-3.1-1 Spill and overflow control

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1. (a) The owner and operator shall ensure the following:

- (1) Releases due to spilling or overfilling do not occur.
- (2) The volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made.
- (3) The transfer operation is monitored constantly to prevent overfilling and spilling.
- (4) The transfer operation complies with the following:
 - (A) National Fire Protection Association Publication 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids", 1990 Edition, as incorporated by reference under rules of the fire prevention and building safety commission at 675 IAC 22-2.2-21.
 - (B) Article 79, "Flammable and Combustible Liquids", of the 1998 Indiana Fire Code under rules of the fire prevention and building safety commission at 675 IAC 22-2.2.

(b) The owner and operator shall report, investigate, and clean up any spills and overfills under 329 IAC 9-4-4.

(c) Deliveries must be made through a drop tube that extends to within one (1) foot of the tank bottom. *(Solid Waste Management Board; 329 IAC 9-3.1-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3704)*

329 IAC 9-3.1-2 Operation and maintenance of corrosion protection

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 2. The owner and operator of a steel UST system with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that:
 - (A) routinely contain regulated substances; and
 - (B) are in contact with the ground.
- (2) All UST systems equipped with galvanic cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester under the following requirements:
 - (A) All galvanic cathodic protection systems must be tested within six (6) months of installation and at least every three (3) years thereafter.
 - (B) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
- (3) All UST systems with impressed current cathodic protection systems must be inspected every sixty (60) days to ensure the equipment is running according to manufacturer's specifications.
- (4) Records of the operation of the cathodic protection must be maintained under 329 IAC 9-3 to demonstrate compliance with the performance standards in this section. These records must provide the following:
 - (A) The results of the most recent three (3) inspections required in subdivision (3).
 - (B) The results of testing from the last two (2) inspections required in subdivision (2).
- (5) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal.

(Solid Waste Management Board; 329 IAC 9-3.1-2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3704)

329 IAC 9-3.1-3 Compatibility

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3. (a) The owner and operator shall use a UST system made of or lined with materials that are compatible with the regulated substance stored in the UST system.

- (b) For tanks that store alcohol blends, one (1) or more of the following codes must be used to comply with subsection (a):
 - (1) American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations", First Edition, April 1985, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (2) American Petroleum Institute Recommended Practice 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations", First Edition, August 1986, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(Solid Waste Management Board; 329 IAC 9-3.1-3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3704)

329 IAC 9-3.1-4 Repairs allowed

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. (a) The owner and operator of a UST system shall ensure that repairs prevent releases due to:

- (1) structural failure as long as the UST system is used to store regulated substances; or
 - (2) corrosion as long as the UST system is used to store regulated substances.
- (b) The repairs must meet the following requirements:
- (1) Repairs to a steel UST system must be conducted in accordance with one (1) or more of the following:
 - (A) Article 79, "Flammable and Combustible Liquids", of the 1998 Indiana Fire Code, 675 IAC 22-2.2.
 - (B) American Petroleum Institute Recommended Practice 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines", Third Edition, May 1994, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", Fourth

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Edition, October 1997, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(D) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection", revised 1991, National Leak Prevention Association, Route 2, Box 106A, Falmouth, Kentucky 41040.

(2) Repairs to a fiberglass-reinforced plastic tank may be made:

(A) by the manufacturer's authorized representative using the manufacturer's specifications; or

(B) by the owner or operator in accordance with one (1) or more of the following:

(i) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol, and Alcohol-Gasoline Mixtures", 1994, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Codes listed in Class 6 of American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", Fourth Edition, October 1997, American Petroleum Institute, 1220 L Street NW, Washington, D. C. 20005-4070.

(iii) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection", revised 1991, National Leak Prevention Association, Route 2, Box 106A, Falmouth, Kentucky 41040.

(3) The requirements for pipes and fittings are as follows:

(A) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced.

(B) Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(4) The repaired tank and piping must be tightness tested under 329 IAC 9-7-4(3) and 329 IAC 9-7-5(2) within thirty (30) days following the date of the completion of the repair except as provided under one (1) of the following:

(A) The repaired tank is internally inspected in accordance with one (1) or more of the standards listed in subdivision (1) or (2).

(B) The repaired portion of the UST system is monitored monthly for releases under a method specified in 329 IAC 9-7-4(4) through 329 IAC 9-7-4(8).

(C) Another test method is used that is determined by the commissioner to be no less protective of human health and the environment than those listed in clauses (A) and (B).

(5) Following the repair of any cathodically protected UST system, the cathodic protection system must be tested under:

(A) section 2(2) of this rule within six (6) months following the repair for a galvanic cathodic protection system to ensure that it is operating properly; and

(B) section 2(3) of this rule within sixty (60) days following the repair for an impressed current cathodic protection system to ensure that it is operating properly.

(6) The UST system owner and operator shall maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with this section.

(7) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal.

(Solid Waste Management Board; 329 IAC 9-3.1-4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3705)

Rule 4. Releases

329 IAC 9-4-1 Reporting of suspected releases

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1. The owner and operator of a UST system shall report to the agency within twenty-four (24) hours and follow the procedures in 329 IAC 9-5-4.1 for any of the following conditions:

(1) The discovery by the owner and operator or another person of released regulated substances at the underground storage tank site or in the surrounding area. Released regulated substances may include the presence of free product or vapors in any of the following:

(A) Soils.

- (B) Basements.
- (C) Storm sewer lines.
- (D) Sanitary sewer lines.
- (E) Utility lines.
- (F) Nearby surface water.
- (G) Ground water.

(2) Unusual operating conditions observed by the owner and operator that may include the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank unless the system equipment is:

- (A) found to be defective but not leaking; and
- (B) immediately repaired or replaced.

(3) Monitoring results from the release detection method required under 329 IAC 9-7-2 and 329 IAC 9-7-3 that indicate a release may have occurred unless:

- (A) the monitoring device is:
 - (i) found to be defective; and
 - (ii) immediately repaired, recalibrated, or replaced;and additional monitoring does not confirm the initial result; or
- (B) in the case of inventory control, a second month of data does not confirm the initial result.

(Solid Waste Management Board; 329 IAC 9-4-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1069; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3706; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-4-2 Investigations due to off-site impacts

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 2. When required by the commissioner, the owner and operator of a UST system shall follow the procedures in section 3 of this rule to determine if the UST system is the source of off-site impacts. These impacts include the presence of regulated substances. The presence of regulated substances may include free or dissolved product or vapors in:

- (1) soils;
- (2) basements;
- (3) storm sewer lines;
- (4) sanitary sewer lines;
- (5) utility lines;
- (6) nearby surface waters;
- (7) nearby drinking waters;
- (8) irrigation ground waters; or
- (9) thermal extraction ground waters;

that have been observed by the agency or brought to the attention of the agency by another person. *(Solid Waste Management Board; 329 IAC 9-4-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1070; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3706; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-4-3 Release investigations and confirmation steps

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3. Unless corrective action is initiated in accordance with 329 IAC 9-5, the owner and operator shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 1 of this rule within seven (7) days using the following steps or another procedure approved by the commissioner:

- (1) The owner and operator shall conduct tests according to the requirements for tightness testing in 329 IAC 9-7-4(3) and 329 IAC 9-7-5(2) to determine whether a leak exists in that portion of the tank that routinely contains product or the attached delivery piping, or both. The owner and operator shall complete one (1) of the following:

- (A) The owner and operator shall repair, replace, or upgrade the UST system and begin corrective action in accordance with 329 IAC 9-5 if the test results for the system, tank, or delivery piping indicate that a leak exists.
 - (B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not present.
 - (C) The owner and operator shall conduct a site check as described in subdivision (2) if the test results for the system, tank, and delivery piping do not indicate that a leak exists, but environmental contamination is present.
- (2) The owner and operator shall measure for the presence of a release where contamination is most likely to be present at the underground storage tank site. In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence and source of the release. The owner and operator shall complete one (1) of the following:
- (A) If the test results for the excavation zone or the underground storage tank site indicate that a release has occurred, the owner and operator shall begin corrective action in accordance with 329 IAC 9-5.
 - (B) If the test results for the excavation zone or the underground storage tank site do not indicate that a release has occurred, further investigation is not required.

(Solid Waste Management Board; 329 IAC 9-4-3; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1070; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3706; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-4-4 Reporting and cleanup of spills and overfills

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. (a) The owner and operator of a UST system shall contain and immediately clean up a spill or overflow, report to the agency within twenty-four (24) hours and begin corrective action in accordance with 329 IAC 9-5 in the following cases:

- (1) Spill or overflow of petroleum that results in a release to the environment that:
 - (A) equals or exceeds twenty-five (25) gallons; or
 - (B) causes a sheen on nearby surface water.

(2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 40 CFR 302.4. The Code of Federal Regulations is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(b) The owner and operator of a UST system shall contain and immediately remove any contaminated media when one (1) of the following occur:

- (1) Spill or overflow of petroleum that is less than twenty-five (25) gallons.
- (2) Spill or overflow of a hazardous substance that is less than the reportable quantity under 40 CFR 302.4. The Code of Federal Regulations is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

If the removal of any contaminated media cannot be accomplished within twenty-four (24) hours, the owner and operator shall immediately notify the agency. *(Solid Waste Management Board; 329 IAC 9-4-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1070; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 5. Corrective Action

329 IAC 9-5-1 Release response and corrective action

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23

Sec. 1. (a) An owner and operator of a petroleum or hazardous substance UST system shall, in response to a confirmed release from the UST system, comply with the requirements of this rule except for UST systems excluded under 329 IAC 9-1-1(b) and UST systems subject to corrective action requirements under Section 3004(u) (42 U.S.C. 6924(u)) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996.

- (b) The owner and operator shall conduct corrective action that meets the following requirements:
 - (1) The corrective action plan is in the following format:

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- (A) Executive summary, including the following:
 - (i) A briefing about the site in narrative form, highlighting events regarding the need for corrective action.
 - (ii) Other information regarding the need for corrective action.
- (B) A narrative concerning contaminant and site conditions, including the following:
 - (i) Contaminant identification including chemical and physical properties.
 - (ii) Contaminant toxicological data.
 - (iii) Potential effects of residual contamination.
 - (iv) Site specific soil and hydrogeologic characteristics.
 - (v) Proximity of local surface waters and ground water and associated water quality data.
 - (vi) Current and potential future uses of local water sources.
 - (vii) A summary of site specific water quality data generated during previously completed site investigations.
 - (viii) Other information necessary to describe site conditions.
- (C) Health and safety plan, including the following:
 - (i) Known hazards and risk evaluation associated with site activities.
 - (ii) List of personnel, alternates to personnel, and areas of responsibilities of personnel.
 - (iii) Levels of personal protection for personnel.
 - (iv) Decontamination equipment and procedures.
 - (v) Site access control measures.
 - (vi) Site emergency procedures, medical care availability, and a route by roadway to health care facilities.
 - (vii) List of emergency phone numbers that includes the fire department, the police department, a local ambulance, and the local hospital or medical facility.
 - (viii) List of personnel's training, qualifications, and certifications.
 - (ix) A description of how the plan will meet health and safety requirements.
- (D) An appropriately scaled regional map that can be reproduced from previously submitted and approved site investigation reports but must include the following:
 - (i) Illustrated legends and compass directions.
 - (ii) A legible, topographic base with ten (10) foot contour intervals.
 - (iii) Location and depth of any wells that have a capacity greater than seventy (70) gallons per minute within a two (2) mile radius of the site.
 - (iv) Location and depth of any wells that have a capacity of less than seventy (70) gallons per minute within a one (1) mile radius of the site.
 - (v) Identification of facilities and land for agricultural, residential, commercial, and industrial use within a one (1) mile radius of the site.
 - (vi) Locations of surface water within a one (1) mile radius of the site.
 - (vii) Site location.
- (E) Appropriately scaled site maps that can be reproduced from previously submitted and approved site investigation reports but must include the following:
 - (i) Illustrated legends and compass directions.
 - (ii) Topographic base with appropriate contour intervals to accurately describe the site.
 - (iii) Identified above ground features, including buildings, roadways, manways, pump islands, and property lines.
 - (iv) Identified subsurface features, including tanks, piping, and utility conduits.
 - (v) Soil boring and monitoring well locations surveyed to one-hundredth (.01) foot accuracy from an on-site temporary benchmark.
 - (vi) Both field and laboratory sampling locations, depth of sample taken, and the contaminant concentration results.
 - (vii) Contaminant plume delineation.
 - (viii) Ground water flow direction.
 - (ix) The location of remediation equipment shown, to scale.
- (F) Geologic and hydrogeologic maps that describe subsurface features and contaminant plume identification and include the following:
 - (i) Cross sections.

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- (ii) Fence diagrams.
- (iii) Geophysical profile or geophysical maps, or both, if available.
- (G) A narrative on selected remediation technology that includes the following:
 - (i) Feasibility studies showing the effectiveness of the selected remediated technology.
 - (ii) A detailed description of the selected technology, design explanations, and illustrations.
 - (iii) Projected contaminant removal or treatment rates, or both.
 - (iv) Technical specifications of equipment and the process.
- (H) Sampling and analysis plan to evaluate the performance of the remediation technology that includes the following:
 - (i) A minimum of quarterly samples taken and reported.
 - (ii) The following as applicable:
 - (AA) Field investigation procedures.
 - (BB) Field screen samples.
 - (CC) Laboratory procedures for checking sample validity, sample acquisition, container, preservation, shipping requirements, storage time, chain of custody, and decontamination of equipment between samples.
 - (DD) Provisions for retention of laboratory quality assurance and quality control information.
 - (EE) Documentation that the sampling and analysis will be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
 - (FF) Provisions for submission of reports that must include a signed laboratory certificate of analysis that lists analysis method, method preparation, date of sample receipt, date of analysis, a statement that the method quality assurance and quality control procedures were followed, the chain of custody documentation, including laboratory receipts, decontamination procedures, and sampling procedures and techniques.
- (I) Timetable that includes the following shown on a Gandt chart:
 - (i) Installation and implementation dates.
 - (ii) Sampling events.
 - (iii) Progress milestones.
 - (iv) Completion dates.
- (J) Provisions for progress reports to be submitted that include the following:
 - (i) Brief narrative of the remediation process.
 - (ii) Documentation and data graphically demonstrating remediation effectiveness.
 - (iii) Quarterly sampling results.
- (K) Provisions for a final report that includes:
 - (i) documentation that the clean-up goals and objectives have been achieved; and
 - (ii) a signature by either a professional engineer, professional geologist, hydrologist, or certified hazardous materials manager.

(2) The soil clean-up objectives must be determined and met by complying with IC 13-12-3-2.

(3) The ground water clean-up objectives must be determined and met by complying with IC 13-12-3-2.

(c) The owner and operator may conduct another method of corrective action that is:

(1) as protective of human health and the environment as that provided in subsection (b); and

(2) approved by the commissioner.

(Solid Waste Management Board; 329 IAC 9-5-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-5-2 Initial response

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 2. Upon confirmation of a release in accordance with 329 IAC 9-4-3 or after a release from the UST system is identified

in any other manner, the owner and operator shall perform the following initial response actions within twenty-four (24) hours of a release:

- (1) Report the release to the agency.
- (2) Take immediate action to prevent any further release of the regulated substance into the environment.
- (3) Identify and mitigate fire, explosion, and vapor hazards.

(Solid Waste Management Board; 329 IAC 9-5-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3709; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-5-3 Initial abatement measures and site check (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Board; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761)*

329 IAC 9-5-3.1 Free product removal

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 3.1. At sites where investigations under section 4.1(a)(6) of this rule indicate the presence of free product, the owner and operator shall remove free product to the maximum extent practicable as determined by the commissioner while continuing, as necessary, any actions initiated under sections 2, 4.1, and 5.1 of this rule, or preparing for actions required under sections 6 and 7 of this rule. In meeting the requirements of this section, the owner and operator shall do the following:

- (1) Conduct free product removal in a manner that:
 - (A) minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site; and
 - (B) properly treats, discharges, or disposes of recovery products and byproducts in compliance with applicable local, state, and federal regulations.
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system.
- (3) Handle any flammable products in a safe and competent manner to prevent fires or explosions in accordance with the site health and safety plan as required by section 7(e) of this rule.
- (4) Unless directed to do otherwise by the commissioner, prepare and submit to the agency, within forty-five (45) days after confirming a release, a free product removal report that provides at least the following information:
 - (A) The name of the person responsible for directing the free product removal measures.
 - (B) The estimated quantity, type, and thickness of free product observed or measured in wells, bore holes, and excavations.
 - (C) The type of free product recovery system used.
 - (D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located.
 - (E) The type of treatment applied to, and the effluent quality expected from, any discharge.
 - (F) The steps that have been, or are being taken, to obtain necessary permits for any discharge.
 - (G) The disposition of the recovered free product.

(Solid Waste Management Board; 329 IAC 9-5-3.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3709; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-5-4 Initial site characterization (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Board; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761)*

329 IAC 9-5-4.1 Initial abatement measures and site check

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 4.1. (a) The owner and operator shall perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as necessary to prevent further release to the environment.
- (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water.
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures, which may include any:
 - (A) storm sewers;
 - (B) sanitary sewers;
 - (C) utility lines; or
 - (D) basements.
- (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with applicable state and local requirements.
- (5) Measure for the presence of a release where contamination is most likely to be present at the underground storage tank site unless the presence and source of the release have been confirmed in accordance with the site check required by 329 IAC 9-4-3(2) or the closure site assessment of 329 IAC 9-6-2. In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release.
- (6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with section 3.1 of this rule.
 - (b) If:
 - (1) drinking water is affected;
 - (2) free product is present; or
 - (3) vapors are present in:
 - (A) storm sewers;
 - (B) sanitary sewers;
 - (C) utility lines; or
 - (D) inhabitable buildings;

within twenty (20) days after release confirmation, the owner and operator shall submit a report to the agency summarizing the initial abatement steps taken under subsection (a) and any resulting information or data.

(c) If a closure report is submitted to the agency under 329 IAC 9-6-2(i), the report under subsection (b) is not required unless emergency conditions exist.

(d) The commissioner may approve an alternative abatement procedure only if the procedure provides substantially equal protection for human health and the environment as the abatement procedure in subsection (a). (*Solid Waste Management Board; 329 IAC 9-5-4.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3709; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-5-5 Free product removal (Repealed)

Sec. 5. (Repealed by Solid Waste Management Board; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761)

329 IAC 9-5-5.1 Initial site characterization

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23; IC 25-17.6; IC 25-31-1

Sec. 5.1. (a) The owner and operator shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 2 and 4.1 of this rule. This information must include the following:

- (1) Data on the nature and estimated quantity of release.
- (2) Data from available sources or site investigations, or both, concerning the following factors:
 - (A) Surrounding populations.
 - (B) Water quality.

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- (C) Use and approximate locations of all wells within:
 - (i) a one (1) mile radius for ground water wells for background;
 - (ii) a two (2) mile radius for municipal water supply wells for investigations;
 - (iii) a two (2) mile radius for wells with a capacity greater than seventy (70) gallons per minute for investigation; and
 - (iv) a one (1) mile radius for wells with a capacity less than seventy (70) gallons per minute for investigation.
 - (D) Subsurface soil conditions.
 - (E) Locations of:
 - (i) storm sewers;
 - (ii) sanitary sewers;
 - (iii) utility lines; and
 - (iv) french drains.
 - (F) Climatological conditions.
 - (G) Land use.
- (3) Results of the site check required under section 4.1(a)(5) of this rule.
- (4) Results of the free product investigations required under section 4.1(a)(6) of this rule, to be used by the owner and operator to determine whether free product must be recovered under section 3.1 of this rule.
- (5) Known or expected extent of contamination.
- (6) Information requested by the commissioner.
- (b) Within forty-five (45) days of release confirmation, the owner and operator shall submit the information collected under subsection (a) to the agency as follows:
- (1) In a manner that demonstrates the applicability and technical adequacy of the information;
 - (2) In a format as follows:
 - (A) Background, including the following:
 - (i) The owner's and operator's name and address.
 - (ii) Past owners' and operators' names and addresses.
 - (iii) The facility name, address, and telephone number.
 - (iv) All prior and present operations of the facility.
 - (v) Prior construction activities.
 - (vi) List prior spills at the facility.
 - (vii) Site proximity to sensitive areas, such as schools and well fields.
 - (viii) Subsurface soil descriptions.
 - (ix) Location of all ground water wells within a one (1) mile radius of the facility.
 - (x) Description of all site work completed.
 - (xi) Number and volume of underground storage tank or tanks.
 - (xii) Underground storage tank construction material and type of leak detection.
 - (xiii) Past and present contents of each underground storage tank.
 - (xiv) Records of most recent tightness test results, inventory records, and underground storage tank gaging records for the prior calendar year.
 - (xv) Underground storage tank age and date of installation.
 - (xvi) Underground storage tank system closure report submittal date, if applicable.
 - (B) Release incident description, including the following:
 - (i) Date reported to the department.
 - (ii) Release incident number given by the department at the initial report.
 - (iii) Assigned departmental site priority ranking obtained at the initial report.
 - (iv) List material or materials released.
 - (v) List volume lost.
 - (vi) List areas affected, such as the soil, ground water, or sewers.
 - (vii) Health and environmental risks associated with the spill incident.
 - (C) Initial response and abatement information, including the following:
 - (i) Detailed description of immediate actions to prevent any further release.

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- (ii) Measures taken to prevent further migration of the spill.
- (iii) Actions taken to identify and mitigate fire and explosion hazards posed by vapors or free product.
- (iv) Actions to investigate free product release.
- (D) Free product recovery information, including the following:
 - (i) Name of person or persons responsible for product removal.
 - (ii) Estimated quantity, type, and thickness of product observed or discovered.
 - (iii) A description of the recovery system.
 - (iv) Copies of all permits from local, state, and federal agencies necessary for handling, treating, discharging, and disposing of the contaminants.
 - (v) Final disposition of the recovered free product.
- (E) Investigation information, including the following:
 - (i) Types of bedrock.
 - (ii) Soil series description.
 - (iii) List of regional soil and geologic references used.
 - (iv) Regional hydrogeological references used.
 - (v) Appropriately scaled regional maps with the following:
 - (AA) Illustrated legends and compass direction.
 - (BB) Topographic base with ten (10) foot contour intervals.
 - (CC) Location, depth, and corresponding department of natural resources' well records of wells with a capacity over seventy (70) gallons per minute and municipal water supply wells within a two (2) mile radius of the site.
 - (DD) Location, depth, and corresponding department of natural resources' well records of wells with a capacity of less than seventy (70) gallons per minute within a one (1) mile radius of the site.
 - (EE) Identification of facilities and land for agricultural, industrial, and commercial use within one (1) mile radius of the site.
 - (FF) Locations of surface water within a one (1) mile radius of the site.
 - (vi) Site-specific geologic information as follows:
 - (AA) A minimum of three (3) on-site, continuously sampled soil borings.
 - (BB) Soil borings, accurately field surveyed with a horizontal closure of less than one (1) foot error, placed as needed to confirm the extent of soil contamination.
 - (CC) Site soil stratigraphy identification, including cross sections.
 - (DD) Boring logs that give lithologic descriptions, degree of sorting, sedimentary contacts, gas readings, and vapor readings.
 - (EE) Boring logs with the same vertical scale and including surface elevations.
 - (vii) Hydrogeologic information, including the following:
 - (AA) Depth to ground water with seasonal fluctuations determined by at least quarterly monitoring events.
 - (BB) Flow directions and gradients.
 - (CC) Hydraulic conductivity, transmissivity, storativity, confined or unconfined condition, porosity, and average linear velocity of the aquifer or aquifers involved.
 - (DD) A minimum of three (3) monitoring wells screened across water table fluctuation and not placed in a straight line.
 - (EE) Monitoring wells placed as needed to confirm extent of ground water contamination.
 - (FF) Monitoring well location surveyed to a temporary benchmark with a vertical accuracy of one-hundredth (.01) foot and with a horizontal closure of less than one (1) foot.
 - (GG) Well construction records submitted with the same scale that includes surface and the top of the well casing elevations.
 - (viii) Contamination plume identification and maps, appropriately scaled, that include the following:
 - (AA) The horizontal and vertical extent of contamination must be defined.
 - (BB) Illustrated legends and compass directions.
 - (CC) Topographic base with appropriate contour intervals to accurately describe the site.
 - (DD) Identification of aboveground features, including buildings, roadways, manways, pump islands, and

property lines.

(EE) Identification of subsurface features, including tanks, piping, and utility conduits.

(FF) Soil borings and monitoring well locations surveyed to a temporary benchmark with an accuracy of one-hundredth (.01) foot.

(GG) Both field and laboratory sampling locations, depth of sample taken and the contaminant concentration results.

(HH) Horizontal and vertical contaminant plume identification.

(II) Geologic cross sections showing the water table and illustrating vertical contaminant plume identification.

(JJ) Ground water flow directions.

(F) Sampling information, including the following:

(i) Field investigation procedures.

(ii) Field screen samples.

(iii) Laboratory procedures that include checking sample validity, sample acquisition, container, preservation, shipping requirements, storage time, chain of custody, and decontamination of equipment between samples.

(iv) Provisions for retention of laboratory quality assurance and quality control information, so that the information may be made available to representatives of the department upon request.

(v) Documentation that the sampling and analysis conducted was in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(vi) A report that includes a signed laboratory certificate of analysis that lists analysis method, method preparation, date of sample receipt, date of analysis, a statement that the method quality assurance and quality control procedures were followed, the chain of custody documentation, including laboratory receipts, decontamination procedures, and sampling procedures and techniques.

(vii) Analytical methods and corresponding detection limits in the tables at 329 IAC 9-1-10.2.

(G) Results and conclusions that include the following:

(i) Discussion of the results of the site investigation.

(ii) Field and laboratory sample results in a tabular format.

(H) Recommendations that include the following:

(i) Feasibility studies.

(ii) Discussion of effective remediation alternatives, including the following for each alternative:

(AA) Overall effectiveness of technology.

(BB) Ability to achieve clean-up criteria.

(CC) Expected treatment duration.

(DD) Treatment reliability.

(EE) Permits that will be required.

(3) In a report that is signed by an environmental professional that may include:

(A) registered professional engineer under IC 25-31-1;

(B) certified professional geologist under IC 25-17.6; or

(C) certified hazardous materials manager (CHMM).

(c) The commissioner may approve an alternative procedure for initial site characterization only if the procedure provides substantially equal protection for human health and the environment as the initial site characterization in subsections (a) and (b). (*Solid Waste Management Board; 329 IAC 9-5-5.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3710; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-5-6 Investigations for soil and ground water cleanup

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 6. (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination of the ground water, the owner and operator shall conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that ground water wells have been affected by the release. This evidence may include any found during release confirmation or previous corrective action measures.
- (2) Free product is found to need recovery in compliance with section 3.1 of this rule.
- (3) There is evidence that contaminated soils may be in contact with ground water. This evidence may include any found while conducting the initial response measures or investigations required under sections 1 through 5.1 of this rule [329 IAC 9-5-3, 329 IAC 9-5-4, and 329 IAC 9-5-5 were repealed filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761.].
- (4) The commissioner requests an investigation based on the potential effects of contaminated soil or ground water on nearby surface water and ground water resources.

(b) The owner and operator shall submit the information collected under subsection (a) as soon as practicable or in accordance with a schedule established by the commissioner. (*Solid Waste Management Board; 329 IAC 9-5-6; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1072; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3712; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-5-7 Corrective action plan

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-8-4

Sec. 7. (a) At any point after reviewing the information submitted in compliance with sections 1, 2, 4.1, and 5.1 of this rule, the commissioner may require the owner and operator to:

- (1) submit additional information; or
- (2) develop and submit a corrective action plan for responding to contaminated soils and ground water.

If a plan is required, the owner and operator shall submit the plan according to a schedule established by the commissioner and the format designated under section 1(b)(1) of this rule. Alternatively, the owner and operator may, after fulfilling the requirements of sections 2, 4.1, and 5.1 of this rule, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, the owner and operator are responsible for submitting a plan that provides for adequate protection of human health and the environment, as determined by the commissioner, and shall modify their plan as necessary to meet this standard. The corrective action plan may be automatically deemed approved under subsection (f).

(b) The commissioner will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the commissioner shall consider the following factors, as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration.
- (2) The hydrogeologic characteristics of the facility and the surrounding area.
- (3) The proximity, quality, and current and future uses of nearby surface water and ground water.
- (4) The potential effects of residual contamination on nearby surface water and ground water.
- (5) An exposure assessment.
- (6) Any information assembled in compliance with this rule.
- (7) The suitability of the chosen remediation method for site conditions.

(c) Upon approval of the corrective action plan or as directed by the commissioner, the owner and operator shall implement the plan, including modifications to the plan made by the commissioner. The owner and operator shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the commissioner.

(d) The owner and operator may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that the owner and operator:

- (1) notify the agency of their intention to begin cleanup;
 - (2) comply with any conditions imposed by the commissioner, including halting cleanup or mitigating adverse consequences from cleanup activities; and
 - (3) incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the commissioner for approval.
- (e) During corrective action, the owner and operator and their designees shall adhere to a written health and safety plan that

meets all applicable requirements of the occupational safety standards commission, and the rules of the fire prevention and building safety commission, 675 IAC 22-2.2.

(f) If requirements are satisfied under IC 13-23-8-4(a)(5)(A) and IC 13-23-8-4(a)(5)(B), the corrective action plan is automatically deemed approved under IC 13-23-8-4(a)(5). (*Solid Waste Management Board; 329 IAC 9-5-7; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1072; errata, 16 IR 1955; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3713; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-5-8 Public participation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 8. (a) For each confirmed release that requires a corrective action plan, the commissioner shall provide notice to the public in a manner designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include any of the following:

- (1) Public notice in local newspapers.
- (2) Block advertisements.
- (3) Public service announcements.
- (4) Publication in the Indiana Register.
- (5) Letters to individual households.
- (6) Personal contacts by field staff.

(b) The commissioner shall ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the commissioner may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The commissioner shall give public notice that complies with subsection (a) if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of the plan is under consideration by the commissioner. (*Solid Waste Management Board; 329 IAC 9-5-8; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1073; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3713; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 6. Closure

329 IAC 9-6-1 Permanent closure and change-in-service

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1. (a) At least thirty (30) days before beginning either permanent closure or a change-in-service, the owner and operator shall notify the agency of their intent to permanently close or make the change-in-service unless such action is in response to corrective action. The required assessment of the excavation zone under section 2 of this rule must be performed:

- (1) after notifying the agency; and
- (2) before completion of the permanent closure or change-in-service.

(b) Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, the owner and operator shall complete the following:

- (1) Empty and clean the tank by removing all liquid and accumulated sludge.
- (2) Conduct a site assessment in accordance with section 2 of this rule.

(c) To permanently close a tank, the owner and operator shall complete the following:

- (1) Empty and clean the tank by removing all liquids and accumulated sludges.
- (2) Complete either of the following:

(A) Remove the tank from the ground under section 2(a) or 2(b) of this rule.

(B) Fill the tank with an inert solid material under section 2(d) of this rule.

(*Solid Waste Management Board; 329 IAC 9-6-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1073; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3714; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-6-2 Assessing the site at closure or change-in-service

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 2. (a) Clean closure requirements must be completed as follows:

- (1) The excavation zone is defined as the area where backfill is removed to facilitate the removal of the following:
 - (A) The underground storage tank.
 - (B) A maximum depth of twelve (12) inches of native soil may be removed from the sidewalls and bottom of the excavation.
- (2) Closure of the UST system must be completed as follows:
 - (A) The underground storage tank must be removed from the ground unless permission to close the UST system in place has been granted by the:
 - (i) office of the state fire marshal; and
 - (ii) commissioner.
 - (B) The backfill may be removed from the following to provide access to native soil for sampling:
 - (i) Tank cavity excavation.
 - (ii) Piping trenches.
 - (iii) Dispensing unit areas.
 - (iv) Remote fill pipe trenches.
 - (C) A maximum depth of twelve (12) inches of native soil may be removed from the following:
 - (i) Sidewalls and bottom of the tank cavity excavation.
 - (ii) Piping trenches.
 - (iii) Dispensing unit areas.
 - (iv) Remote fill pipe trenches.
 - (D) Closure soil samples must be taken from the:
 - (i) excavated backfill under subsection (f)(1)(B); and
 - (ii) undisturbed native soil under subsection (f)(1)(A);
 and analyzed under subsection (g)(1) and (g)(2).
- (3) If any water is encountered in the excavation, one (1) water sample must be collected and analyzed under subsection (g)(3). The owner and operator are not required to complete ground water screening under subsection (g)(2). If contaminated water has one (1) or more COC that is detected in an amount greater than or equal to the detection limit listed in the following table, the owner and operator shall begin site investigation and corrective action under 329 IAC 9-5:

Ground Water Analysis

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Kerosene, gasoline	Benzene, toluene, ethylbenzene, xylene, and methyl-tertiary-butyl-ether	GC/PID 8020 or GC/MS 8240/60 or GC/MS 524.2 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	5 parts per billion (ppb) (µg/L)
Naphtha, diesel fuel	Benzene, toluene, ethylbenzene, xylene	GC/PID 8020 or GC/MS 8240/60 or GC/MS 524.2 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	5 ppb (µg/L)

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Total semivolatile organic compounds	GC/MS 8270 or GC/MS 525 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	10 ppb (µg/L)
Waste oil (Waste oil is the same as "used oil" as defined at 329 IAC 13-2-19)	Total petroleum hydrocarbons 418.1 IR in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	1,000 ppb (µg/L)
Hazardous substance (Hazardous substance is specified by 329 IAC 9-1-25(1))	"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	As set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Ground Water Analysis for Waste Oil

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Waste oil (Waste oil is the same as "used oil" as defined at 329 IAC 13-2-19)	Volatile organic compounds and methyl-tertiary-butyl-ether	GC/PID 8020 or GC/MS 8240/60 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	5 parts per billion (ppb) (µg/L)
	Semivolatile organic compounds	GC/MS 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	10 ppb (µg/L)

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Polychlorinated biphenyls	GC/ECD 8080/8081 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	0.5 ppb (µg/L), except for Aroclor 1254 and 1260 that is 1 ppb (µg/L)
Barium, cadmium, chromium (total), lead, mercury, nickel, and zinc	Applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	As set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
Hazardous substance (Hazardous substance is specified by 329 IAC 9-1-25(1))	"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	As set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(4) If the underground storage tank contains hazardous substances, the owner and operator shall perform sampling and analysis under subsection (g)(4).

(5) Piping and dispenser sampling and analysis must be completed under subsection (f)(2) or (f)(3).

(6) If, at any time during the closure process, a release is suspected and is detected by calibrated field instruments in the backfill or native soil, the owner and operator shall contact the agency to obtain a leaking underground storage tank (LUST) incident number within twenty-four (24) hours after the release is detected.

(b) Modified closure requirements must be completed as follows:

(1) Over-excavation of the soil in the:

- (A) underground storage tank pit;
- (B) piping trench run; and
- (C) pump island;

is permitted for a modified closure with a maximum soil excavation of one thousand (1,000) cubic yards.

(2) Sampling and laboratory analysis of the over-excavated soil must occur every fifty (50) cubic yards until the chemical of concern (COC) in the over-excavated soil measures less than the clean-up objective concentration listed under 329 IAC 9-1-29.1.

(3) Closure soil samples must be taken from the:

- (A) excavated backfill under subsection (f)(1)(B); and
- (B) undisturbed native soil under subsection (f)(1)(A);

and analyzed under subsection (g)(1) and (g)(2).

(4) If any water is encountered in the excavation, one (1) water sample must be collected and analyzed under subsection (g)(3). The owner and operator are not required to complete ground water screening under subsection (g)(2). If contaminated water

has one (1) or more COC that is detected in an amount greater than or equal to the detection limits in subsection (a)(3), the owner and operator shall begin site investigation and corrective action under 329 IAC 9-5.

(5) If the underground storage tank contains hazardous substances, the owner and operator shall perform sampling and analysis under subsection (g)(4).

(6) Piping and dispenser sampling and analysis must be completed under subsection (f)(2) or (f)(3).

(7) If at any time during the closure process, a release is suspected and is detected by calibrated field instruments in the backfill or native soil, the owner and operator shall contact the agency to obtain a LUST incident number within twenty-four (24) hours after the release is detected.

(c) The owner and operator shall begin site investigation and corrective action under 329 IAC 9-5 if any of the following is discovered:

(1) Contaminated soils that:

(A) have one (1) or more COC that is detected in an amount greater than or equal to:

- (i) one hundred (100) parts per million total petroleum hydrocarbons (TPH) for an on-site area;
- (ii) twenty (20) parts per million TPH for an off-site area; or
- (iii) the amount determined by the commissioner for hazardous substances only; and

(B) cannot meet the standards under subsection (b).

(2) Contaminated ground water that has one (1) or more COC that is detected in an amount greater than or equal to the detection limits in subsection (a)(3).

(3) Free product as a liquid or vapor.

(d) In-place closure requirements must be completed as follows:

(1) The owner and operator shall submit a site plan with proposed boring locations to the agency with the notification form under 329 IAC 9-2-2 and with the office of the state fire marshal approval to request in-place closure. The accompanying map must be to scale and include the entire site. Submission of an additional map of solely the underground storage tank area is recommended for large sites. The proposed boring locations are as follows:

(A) One (1) soil boring, geoprobe, or other punch technology every twenty (20) feet around the tank area, with a minimum of four (4) borings.

(B) Each boring, geoprobe, or other punch technology must be within three (3) feet adjacent to the underground storage tank.

(2) The commissioner may grant conditional approval to proceed with in-place closure of the UST system based on the following:

(A) The location of the borings, geoprobes, or other punch technology under subdivision (1).

(B) Approval from the office of the state fire marshal.

(C) Guidance provided by the agency.

(3) After approval is received under subdivision (2), the owner and operator may proceed with the soil borings, geoprobes, or other punch technology and analysis that must meet the following requirements:

(A) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.

(B) Soil borings, geoprobes, or other punch technology must extend to either of the following:

(i) Two (2) feet or greater below the elevation of the underground storage tank bottom.

(ii) A depth where ground water is encountered. When ground water is encountered, the following must be completed:

(AA) The boring, geoprobe, or other punch technology must be discontinued.

(BB) Ground water sampling must be initiated under subsection (g)(3).

If ground water is not encountered under this clause, ground water screening must be completed under subsection (g)(2).

(C) If the boring, geoprobe, or other punch technology depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the following locations:

(i) One (1) soil sample must be taken at the:

(AA) midpoint of the boring, geoprobe, or other punch technology; or

(BB) point where contamination is detected.

(ii) One (1) soil sample must be taken at the bottom of the boring, geoprobe, or other punch technology.

(D) If the boring, geoprobe, or other punch technology depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required. The most shallow soil sample must be taken one (1) foot or greater below grade.

- (E) Each soil sample must be analyzed under subsection (g)(1).
- (4) Closure soil samples must be taken from the:
 - (A) excavated backfill under subsection (f)(1)(B); and
 - (B) undisturbed native soil under subsection (f)(1)(A);and analyzed under subsection (g)(1) and (g)(2).
- (5) If the underground storage tank contains hazardous substances, the owner and operator shall perform sampling and analysis under subsection (g)(4).
- (6) Piping and dispenser sampling and analysis must be completed under subsection (f)(2) or (f)(3).
- (7) The waiver of closure sampling requirements under subsection (e) will not be granted for in-place closures.
- (8) If, at any time during the closure process, a release is suspected and is detected by calibrated field instruments in the backfill or native soil, the owner and operator shall contact the agency to obtain a LUST incident number within twenty-four (24) hours after the release is detected.
- (9) The owner and operator shall begin site investigation and corrective action under 329 IAC 9-5 if any of the following is discovered:
 - (A) Contaminated soils that:
 - (i) have one (1) or more COC that is detected in an amount greater than or equal to:
 - (AA) one hundred (100) parts per million TPH for an on-site area;
 - (BB) twenty (20) parts per million TPH for an off-site area; or
 - (CC) the amount determined by the commissioner for hazardous substances only; and
 - (ii) cannot meet the standards under subsection (b).
 - (B) Contaminated ground water that has one (1) or more COC that is detected in an amount greater than or equal to the detection limit in subsection (a)(3).
 - (C) Free product as a liquid or vapor.
- (e) Closure sampling waiver requirements must be completed as follows:
 - (1) The commissioner may waive closure sampling based on the following:
 - (A) The LUST incident number is assigned and the following requirements are completed:
 - (i) Closure is conducted due to a confirmed release at the site.
 - (ii) The confirmed release occurred before the request for closure.
 - (B) The initial site characterization meets the requirements of 329 IAC 9-5-5.1.
 - (C) The corrective action plan meets the requirements of 329 IAC 9-5-7.
 - (2) Sites that have previous releases and are not under remediation at the time of closure are not eligible for the closure sampling waiver.
 - (3) If a suspected release is not confirmed, closure sampling is required.
- (f) Closure sampling requirements must be completed as follows:
 - (1) Each underground storage tank excavation must be sampled separately. Composite samples are not acceptable for closure. The samples must meet the following requirements:
 - (A) All samples must be discrete grab samples taken directly from the undisturbed native soil in bottom and sidewall samples. The following requirements apply to samples:
 - (i) Bottom samples must meet the following requirements:
 - (AA) Soil sampling and analysis must consist of a minimum of two (2) bottom soil samples taken within two (2) feet below both ends of each underground storage tank.
 - (BB) If the underground storage tank capacity is greater than ten thousand (10,000) gallons, one (1) additional sample and analysis must be taken within two (2) feet below the middle of the underground storage tank.
 - (ii) Sidewall samples must meet the following requirements:
 - (AA) The sidewalls must be sampled and analyzed at a rate of one (1) sample every twenty (20) feet of perimeter distance around the excavation zone.
 - (BB) If the perimeter dimension measures less than eighty (80) feet, a minimum of one (1) sample for each sidewall must be taken.
 - (CC) Sidewall samples must be taken at a point half the distance from the surface to the bottom of the underground storage tank excavation.

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- (B) Excavated materials must be staged in a separate area. Samples must be discrete grab samples taken directly from the excavated materials. Sampling and laboratory analysis of the excavated soil must occur for every fifty (50) cubic yards.
- (2) Native soil under piping that routinely contains regulated substances and dispenser islands must be sampled and analyzed. All samples must be discrete grab samples. The following requirements apply to sampling and analysis:
 - (A) Piping sampling and analysis must be completed as follows:
 - (i) Piping that is being removed must be sampled under piping elbows and connectors.
 - (ii) Piping that is not being removed must be sampled every twenty (20) feet along the piping run. If the piping run is less than twenty (20) feet in length, one (1) sample must be taken half the distance between the underground storage tank excavation and the pump or dispenser island.
 - (B) Dispenser islands must be sampled and analyzed at a rate of one (1) sample per dispenser.
 - (C) If the UST system has a remote fill line, the following requirements must be completed:
 - (i) The remote fill line must be sampled and analyzed at the origin (fill area) and every twenty (20) feet from the fill area to the underground storage tank connection.
 - (ii) If the piping run is less than twenty (20) feet, one (1) sample must be taken half the distance between the fill area and the underground storage tank.
 - (D) Composite samples are not acceptable for closure.
- (3) Piping and product dispenser samples and analyses are not required if the following requirements are completed:
 - (A) All:
 - (i) piping that routinely contains product; and
 - (ii) dispensers;
 are located directly above the UST system that is being removed.
 - (B) The requirements of clause (A) are documented in the closure report.
- (g) Soil sample analysis, ground water sample screening, and water sample analysis must be completed as follows:
 - (1) Soil sample analysis must be completed at each site as follows:
 - (A) All collected soil samples must be analyzed for the appropriate COC listed in the following table:

Soil Analysis

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Kerosene, gasoline	Total petroleum hydrocarbons (TPH)	GC/FID 8015-Modified (California) or GC/MS 8240/60 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 parts per million (ppm) (mg/kg)
Naphtha, diesel fuel	TPH	GC/FID 8015-Modified (California) or GC/MS 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 ppm (mg/kg)
Waste oil (Waste oil is the same as "used oil" as defined at 329 IAC 13-2-19)	TPH	418.1 IR in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 ppm (mg/kg)

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Soil Analysis for Waste Oil

Possible Contaminant	Parameters to be Analyzed	Acceptable Methods	Detection Limits
Waste oil (Waste oil is the same as "used oil" as defined at 329 IAC 13-2-19)	Volatile organic compounds and methyl-tertiary-butyl-ether	GC/PID 8020 or GC/MS 8240/60 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 parts per million (ppm) (mg/kg)
	Semivolatile organic compounds	GC/MS 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	20 ppm (mg/kg)
	Polychlorinated biphenyls	GC/ECD 8080/8081 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	1 ppm (mg/kg)
	Barium, cadmium, chromium (total), lead, mercury, nickel, and zinc	Applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.	As set in the applicable "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

The analysis must be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(B) The analysis must be standardized to the known or suspected contents of the underground storage tank being closed. Known or suspected contents include regulated substances.

(C) If any sample contains one (1) or more COC that is detected in an amount greater than or equal to the detection limit listed in the table at clause (A), the owner and operator shall contact the agency within twenty-four (24) hours to obtain a LUST incident number.

(2) Ground water screening must be completed at the site as follows:

(A) All collected ground water samples must be analyzed for the appropriate COC listed in the table at 329 IAC 9-6-2(a)(3). The analysis must be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

- (B) The analysis must be standardized to the known or suspected contents of the underground storage tank being closed. Known or suspected contents include regulated substances.
 - (C) One (1) boring, geoprobe, or other punch technology must be placed in each of the four (4) principal directions between zero (0) feet to ten (10) feet of each source area.
 - (D) Each boring, geoprobe, or other punch technology must extend to a total depth of thirty (30) feet below grade. A water sample must be taken if ground water is present within the thirty (30) feet depth.
 - (E) If a geologically susceptible area is present in the location described in clause (C), the owner and operator shall complete the following:
 - (i) Contact the agency for the location of the boring, geoprobe, or other punch technology.
 - (ii) Submit documentation from the agency that indicates the location requirements with the closure report.
 - (F) If any sample contains one (1) or more COC that is detected in an amount greater than or equal to the detection limit listed in 329 IAC 9-6-2(a)(3), the owner and operator shall contact the agency within twenty-four (24) hours to obtain a LUST incident number.
- (3) If any water is encountered in the excavation, the owner and operator shall complete the following:
- (A) One (1) water sample must be collected and analyzed for the appropriate COC listed in subsection (a)(3). The analysis must be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
 - (B) The analysis must be standardized to the known or suspected contents of the underground storage tank being closed. Known or suspected contents include regulated substances.
 - (C) If any sample contains one (1) or more COC that is detected in an amount greater than or equal to the detection limit listed in subsection (a)(3), the owner and operator shall contact the agency within twenty-four (24) hours to obtain a LUST incident number.
- (4) The owner and operator shall contact the agency for:
- (A) soil; and
 - (B) ground water;
- sampling and analytical requirements and detection limits for underground storage tanks that contain hazardous substances. The owner and operator shall submit documentation from the agency that indicates the sampling and analytical requirements with the closure report.
- (h) During UST system removal, native soil and backfill that is to be returned to the underground storage tank excavation must be analyzed for contamination under subsection (g)(1) and (g)(4). The sampling and analysis must meet the following requirements:
- (1) One (1) discrete grab sample must be taken and analyzed for every fifty (50) cubic yards of native soil or backfill.
 - (2) The COC in the excavated native soil or backfill that is to be returned to the underground storage tank excavation must measure less than the cleanup objective concentration listed in the table at 329 IAC 9-1-29.1.
 - (3) The owner and operator shall contact the agency within twenty-four (24) hours to obtain a LUST incident number if one (1) or more COC in the excavated native soil or backfill analyzes at greater than or equal to the detection limit listed in the table at subsection (g)(1)(A).
- (i) Closure report requirements must be completed as follows:
 - (1) A completed closure report must consist of the following:
 - (A) The underground storage tank notification form provided by the agency under 329 IAC 9-2-2.
 - (B) The underground storage tank closure report form provided by the agency.
 - (2) A completed closure report must be submitted to the agency within thirty (30) days after the regulated underground storage tank is removed from the ground or closed in place.
 - (3) If one (1) or more additional tanks are discovered during a closure, the owner and operator shall complete the following:
 - (A) The owner and operator shall properly close each additional tank under this rule.
 - (B) The owner and operator shall supply as much information on each additional tank as possible in the closure report.
 - (4) The commissioner shall require additional information if the closure report is deemed incomplete or incorrect. The commissioner shall provide in writing the reasons for requiring additional information and a list of the additional information required to be submitted. The owner and operator have thirty (30) days to submit the additional information to the agency,

after receipt of written notification from the commissioner that additional information is required.

(5) The closure will not be considered complete until all closure report requirements are met.

(6) Upon:

(A) completion of:

- (i) a clean closure under subsection (a);
- (ii) a modified closure under subsection (b); or
- (iii) an in-place closure under subsection (d);

(B) completion of native soil and backfill return to the underground storage tank excavation under subsection (h); and

(C) completion of closure report requirements under subdivisions (1) through (5);

where all contaminant concentrations are less than the clean-up objective concentrations determined under IC 13-12-3-2, the owner and operator shall receive written notice of closure completion from the commissioner.

(j) Before a change-in-service defined under section 1(b) of this rule is completed, the owner and operator shall measure for the presence of a release where contamination is most likely to be present at the underground storage tank site. The following requirements must be completed:

(1) Soil samples must be taken at all change-in-service sites.

(2) Only sampling and analytical methods approved by the commissioner may be used.

(3) In selecting additional sample types, sample locations, and measurement methods, the owner and operator shall consider the following:

- (A) The nature of the stored substance.
- (B) The type of backfill.
- (C) The depth to ground water.
- (D) Other factors appropriate for identifying the presence of a release.

(k) The requirements of this section are satisfied if one (1) of the external release detection methods allowed in 329 IAC 9-7-4(5) and 329 IAC 9-7-4(6):

(1) is operating in accordance with 329 IAC 9-7-4 at the time of closure; and

(2) indicates no release has occurred.

(l) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal. (*Solid Waste Management Board; 329 IAC 9-6-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3714; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-6-3 Applicability to previously closed UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 3. When directed by the commissioner, the owner and operator of a UST system permanently closed before December 22, 1988, shall assess the excavation zone and close the UST system in accordance with this rule if releases from the underground storage tank may, in the judgment of the commissioner, pose a current or potential threat to human health and the environment under rules of the fire prevention and building safety commission at 675 IAC 12-12. (*Solid Waste Management Board; 329 IAC 9-6-3; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-6-4 Closure records

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 4. The owner and operator shall maintain records in accordance with 329 IAC 9-3-1 that are capable of demonstrating compliance with closure requirements under this rule. The results of the excavation zone assessment required in section 2 of this rule must be submitted to the agency within thirty (30) days after completion of permanent closure or change-in-service of the UST system. Results of the excavation zone assessment must be maintained for at least three (3) years after completion of permanent

closure or change-in-service in one (1) of the following ways:

- (1) By the owner and operator who took the UST system out of service.
- (2) By the current owner and operator of the UST system site.
- (3) By mailing these records to the agency if the records cannot be maintained at the closed facility.

(Solid Waste Management Board; 329 IAC 9-6-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-6-5 Temporary closure

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 5. (a) When a UST system is temporarily closed, the owner and operator shall complete the following:

- (1) Continue operation and maintenance of corrosion protection under 329 IAC 9-3.1-2.
- (2) Continue operation and maintenance of any release detection under 329 IAC 9-7, except release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than:

- (A) two and five-tenths (2.5) centimeters or one (1) inch of residue; or
- (B) three-tenths percent (0.3%) by weight of the total capacity of the UST system;

remains in the system.

- (3) Comply with 329 IAC 9-4 and 329 IAC 9-5 if a release is suspected or confirmed.

(b) When a UST system is temporarily closed for three (3) months or more, the owner and operator also shall comply with the following requirements:

- (1) Leave vent lines open and functioning.
- (2) Cap and secure the following:
 - (A) All other lines.
 - (B) Pumps.
 - (C) Manways.
 - (D) Ancillary equipment.
- (c) When a UST system has been temporarily closed for twelve (12) months, the following requirements must be completed:
 - (1) The owner and operator shall permanently close the UST system if it does not meet:
 - (A) the performance standards in 329 IAC 9-2-1 for new UST systems; or
 - (B) the upgrading requirements in 329 IAC 9-2.1;except that the spill and overflow equipment requirements do not have to be met.
 - (2) The owner and operator shall permanently close the substandard UST system at the end of the temporary twelve (12) month period under sections 1 through 4 of this rule.
 - (3) The commissioner may grant an extension of the twelve (12) month temporary closure period based on the following:
 - (A) The owner and operator shall complete a site assessment under section 2 of this rule before the owner and operator may apply for an extension.
 - (B) The length of the extension is based on the following:
 - (i) The results of the site assessment under clause (A).
 - (ii) The owner and operator shall submit written proof that explains why permanent closure cannot take place within the twelve (12) month period of temporary closure.
 - (iii) The owner and operator shall submit information that explains when permanent closure will take place.

(d) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under rules of the fire prevention and building safety commission at 675 IAC 12-12. *(Solid Waste Management Board; 329 IAC 9-6-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 7. Release Detection

329 IAC 9-7-1 General requirements for all UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
 Affected: IC 13-23

Sec. 1. (a) All owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that does the following:

- (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.
- (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
- (3) Meets the performance requirements in section 4 or 5 of this rule, with any performance claims and the manner of determination of the performance claims described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in the corresponding citation of this rule shown in the table with a probability of detection (Pd) of ninety-five hundredths (0.95) and a probability of false alarm (Pfa) of five-hundredths (0.05):

Method	Citation	Date After Which Pd/Pfa Was Demonstrated
Manual tank gauging	section 4(2) of this rule	December 22, 1990
Tank tightness testing	section 4(3) of this rule	December 22, 1990
Automatic tank gauging	section 4(4) of this rule	December 22, 1990
Automatic line leak detectors	section 5(1) of this rule	September 22, 1991
Line tightness testing	section 5(2) of this rule	December 22, 1990

(b) When a release detection method that is operated under the performance standards in sections 4 and 5 of this rule indicates a release may have occurred, the owner and operator shall notify the agency under 329 IAC 9-4.

(c) Owners and operators of all UST systems shall comply with the release detection requirements of this rule by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year System Was Installed	Year When Release Detection Was Required (By December 22 of the Year Indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after December 22, 1988) immediately upon installation. P = Shall have begun release detection for all pressurized piping under sections 2(2)(A) and 3(2)(D) of this rule. RD = Shall have begun release detection for tanks and suction piping under sections 2(1), 2(2)(B), and 3 of this rule.

(d) Any existing UST system that cannot apply a method of release detection that complies with this rule shall complete the closure procedures under 329 IAC 9-6 by the date on which release detection is required for that UST system under subsection (c). *(Solid Waste Management Board; 329 IAC 9-7-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3723; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-7-2 Requirements for petroleum UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
 Affected: IC 13-23

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Sec. 2. The owner and operator of a petroleum UST system shall provide release detection for tanks and piping as follows:
(1) Tanks must be monitored at least every thirty (30) days for releases using one (1) of the methods listed in section 4(4) through 4(8) of this rule, except for the following:

(A) A UST system that meets:

- (i) the performance standards in 329 IAC 9-2-1 or 329 IAC 9-2.1; and
- (ii) the monthly inventory control requirements in section 4(1) or 4(2) of this rule;

may use tank tightness testing conducted under section 4(3) of this rule at least every five (5) years until December 22, 1998, or until ten (10) years after the tank is installed or upgraded under 329 IAC 9-2.1-1(b), whichever is later.

(B) A UST system that does not meet the performance standards in 329 IAC 9-2-1 or 329 IAC 9-2.1 may use:

- (i) monthly inventory controls conducted under section 4(1) or 4(2) of this rule; and
- (ii) annual tank tightness testing conducted under section 4(3) of this rule;

until December 22, 1998, when the tank must be upgraded under 329 IAC 9-2.1 or permanently closed under 329 IAC 9-6-1.

(C) Tanks with capacity of five hundred fifty (550) gallons or less may use weekly tank gauging conducted under section 4(2) of this rule.

(2) Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one (1) of the following requirements:

(A) Underground piping that conveys regulated substances under pressure must:

- (i) be equipped with an automatic line leak detector under section 5(1) of this rule; and
- (ii) have an annual line tightness test conducted under section 5(2) of this rule or have monthly monitoring conducted under section 5(3) of this rule.

(B) Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three (3) years under section 5(2) of this rule or use a monthly monitoring method under section 5(3) of this rule. No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (i) The below-grade piping operates at less than atmospheric pressure.
- (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.
- (iii) Only one (1) check valve is included in each suction line.
- (iv) The check valve is located directly below and as close as practical to the suction pump.
- (v) A method is provided that allows compliance with items (ii) through (iv) to be readily determined.

(Solid Waste Management Board; 329 IAC 9-7-2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3724; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-7-3 Requirements for hazardous substance UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 3. The owner and operator of a hazardous substance UST system shall provide release detection that meets the following requirements:

(1) Release detection at an existing UST system must meet the requirements for a petroleum UST system in section 2 of this rule. By December 22, 1998, all existing hazardous substance UST systems shall meet the release detection requirements for a new system in subdivision (2).

(2) Release detection at a new hazardous substance UST system must meet the following requirements:

(A) Secondary containment systems must be designed, constructed, and installed to complete the following:

- (i) Contain regulated substances released from the tank system until they are detected and removed.
- (ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system.
- (iii) Be checked for evidence of a release at least every thirty (30) days.

(B) Double-walled tanks must be designed, constructed, and installed to complete the following:

- (i) Contain a release from any portion of the inner tank within the outer wall.

- (ii) Detect the failure of the inner wall.
- (C) External liners, including vaults, must be designed, constructed, and installed to complete the following:
 - (i) Contain one hundred percent (100%) of the capacity of the largest tank within its boundary.
 - (ii) Prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances.
 - (iii) Surround the tank completely so that the external liners, including vaults, are capable of preventing lateral as well as vertical migration of regulated substances.
- (D) Underground piping must be equipped with secondary containment that satisfies the requirements of clause (A) and may include either of the following:
 - (i) Trench liners.
 - (ii) Jacketing of double-walled pipe.

In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector under section 5(1) of this rule.

- (E) Other methods of release detection may be used if the owner and operator complete the following:
 - (i) Demonstrate to the commissioner that an alternate method can detect a release of the stored substance as effectively as any of the methods under section 4(2) through 4(8) of this rule can detect a release of petroleum.
 - (ii) Provide information to the commissioner on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site.
 - (iii) Obtain approval from the commissioner to use the alternate release detection method before the installation and operation of the new UST system.

(Solid Waste Management Board; 329 IAC 9-7-3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3724; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-7-4 Methods of release detection for tanks

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 4. Each method of release detection for tanks used to meet section 2 of this rule must be conducted in accordance with the following:

- (1) Product inventory control, or another test of equivalent performance, must be conducted monthly to detect a release of at least one percent (1.0%) of flow-through plus one hundred thirty (130) gallons on a monthly basis in the following manner:
 - (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day.
 - (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth ($\frac{1}{8}$) of an inch.
 - (C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.
 - (D) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of product withdrawn.
 - (E) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth ($\frac{1}{8}$) of an inch at least once a month.
 - (F) Deliveries must be made through a drop tube that extends to within one (1) foot of the tank bottom.
- (2) Manual tank gauging must meet the following requirements:
 - (A) Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank.
 - (B) Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the period in clause (A).
 - (C) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth ($\frac{1}{8}$) of an inch.
 - (D) A leak is suspected and subject to 329 IAC 9-4 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

SOLID WASTE MANAGEMENT BOARD

Nominal Tank Capacity	Weekly Standard (1 Test)	Monthly Standard (Average of 4 Tests)
550 gallons or less	10 gallons	5 gallons
551–1,000 gallons	13 gallons	7 gallons
1,001–2,000 gallons	26 gallons	13 gallons

- (E) The following requirements apply:
- (i) Only tanks of five hundred fifty (550) gallons or less nominal capacity may use manual tank gauging as the sole method of release detection.
 - (ii) Tanks of five hundred fifty-one (551) to two thousand (2,000) gallons may use manual tank gauging in place of manual inventory control in subdivision (1).
 - (iii) Tanks of greater than two thousand (2,000) gallons nominal capacity must not use manual tank gauging to meet the requirements of this rule.
- (3) Tank tightness testing, or another test of equivalent performance, must be capable of detecting a one-tenth (0.1) gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of the following:
- (A) Thermal expansion or contraction of the product.
 - (B) Vapor pockets.
 - (C) Tank deformation, evaporation, or condensation.
 - (D) Location of the water table.
- (4) Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
- (A) The automatic product level monitor test can detect a two-tenths (0.2) gallon per hour leak rate from any portion of the tank that routinely contains product.
 - (B) Inventory control, or another test of equivalent performance, is conducted under subdivision (1).
- (5) Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
- (A) The materials used as backfill are sufficiently porous to readily allow diffusion of vapors from releases into the excavation area. The materials used as backfill may include any of the following:
 - (i) Gravel.
 - (ii) Sand.
 - (iii) Crushed rock.
 - (B) The stored regulated substance or a tracer compound placed in the tank system, which may include gasoline as an example, is sufficiently volatile to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.
 - (C) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, soil moisture, or other known interferences so that a release could go undetected for more than thirty (30) days.
 - (D) The level of background contamination in the excavation zone must not interfere with the method used to detect releases from the tank.
 - (E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of any of the following:
 - (i) The regulated substance stored in the tank system.
 - (ii) A component or components of the regulated substance stored in the tank system.
 - (iii) A tracer compound placed in the tank system.
- (F) In the UST excavation zone, the site is assessed:
- (i) to ensure compliance with clauses (A) through (D); and
 - (ii) to establish the number and positioning of observation wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.
- (G) Observation wells are clearly marked and secured to prevent damage and unauthorized access and tampering.
- (6) Testing or monitoring for liquids on the ground water must meet the following requirements:
- (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one (1).
 - (B) Ground water is never more than twenty (20) feet from the ground surface. The hydraulic conductivity of the soil between the UST system and the observation wells, monitoring wells, or monitoring devices is not less than one-hun-

- dredth (0.01) centimeter per second. The soil may consist of any of the following:
- (i) Gravel.
 - (ii) Coarse to medium sand.
 - (iii) Coarse silt.
 - (iv) Other permeable material.
- (C) The slotted portion of the observation well casing must be designed:
- (i) to prevent migration of natural soils or filter pack into the well; and
 - (ii) to allow entry of regulated substance on the water table into the well under both high and low ground water conditions.
- (D) Observation wells must be sealed from the ground surface to the top of the filter pack.
- (E) Observation wells, monitoring wells, or monitoring devices must be located as follows:
- (i) An observation well intercepts the excavation zone.
 - (ii) A monitoring well that meets the requirements of rules of the department of natural resources at 310 IAC 16 [310 IAC 16 was repealed filed Nov 22, 1999, 3:34 p.m.: 23 IR 776. See 312 IAC 13.] is installed as close to the excavation zone as is technically feasible if an observation well cannot intercept the excavation zone.
 - (iii) A monitoring device intercepts the excavation zone or is as close to the excavation zone as is technically feasible.
- (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth ($\frac{1}{8}$) of an inch of free product on top of the ground water in the observation wells or monitoring wells.
- (G) Within and immediately below the UST system excavation zone, the site is assessed:
- (i) to ensure compliance with clauses (A) through (E); and
 - (ii) to establish the number and positioning of observation wells, monitoring wells, or monitoring devices that will detect releases from any portion of the tank that routinely contains product.
- (H) Observation wells and monitoring wells are clearly marked and secured to prevent damage and unauthorized access and tampering.
- (7) Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one (1) of the following requirements:
- (A) For a double-walled UST system, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product.
 - (B) For a UST system with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier. The following must be completed:
 - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (no more than 1×10^{-6} centimeters per second for water) to direct a release to an observation well and allow its detection.
 - (ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.
 - (iii) For cathodically protected tanks, the secondary barrier must be installed so that the secondary barrier does not interfere with the proper operation of the cathodic protection system.
 - (iv) The ground water, soil moisture, or rainfall must not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days.
 - (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain unless the barrier and observation well designs are for use under such conditions.
 - (vi) Observation wells are clearly marked and secured to prevent damage and unauthorized access and tampering.
 - (C) For tanks with an internally fitted liner, the following must be completed:
 - (i) An automated device that can detect a release between the inner wall of the tank and the liner.
 - (ii) The liner is compatible with the substance stored.
- (8) Any other type of release detection method, or combination of methods, may be used if one (1) of the following is completed:
- (A) The release detection method or combination of methods must meet the following requirements:
 - (i) Capability to detect a two-tenths (0.2) gallon per hour leak rate or a release of one hundred fifty (150) gallons within a month.

(ii) Probability of detection of ninety-five hundredths (0.95) and a probability of false alarm of five-hundredths (0.05).

(iii) The method is third party certified.

(B) The commissioner may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subdivisions (3) through (7) and clause (A). In comparing methods, the commissioner shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the commissioner on the method's use to ensure the protection of human health and the environment.

(Solid Waste Management Board; 329 IAC 9-7-4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3725; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-7-5 Methods of release detection for piping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 5. Each method of release detection for piping used to meet section 2 of this rule must be conducted in accordance with the following:

(1) A method that alerts the operator to the presence of a leak by:

(A) restricting or shutting off the flow of regulated substances through piping; or

(B) triggering an audible or visual alarm;

may be used only if it detects leaks of at least three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.

(2) A periodic line tightness test of piping may be conducted only if it can detect a one-tenth (0.1) gallon per hour leak rate at one and one-half (1½) times the operating pressure.

(3) Any of the methods in section 4(5) through 4(8) of this rule may be used if the methods are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(Solid Waste Management Board; 329 IAC 9-7-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3727; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-7-6 Release detection record keeping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 6. All UST system owners and operators shall maintain records under 329 IAC 9-3 that demonstrate compliance with all applicable requirements of this rule. These records must include the following:

(1) All written performance claims that pertain to any release detection system used and the manner in which these claims have been justified or tested by the equipment manufacturer or installer. These claims must be maintained for:

(A) five (5) years; or

(B) another reasonable period of time determined by the commissioner; from the date of installation.

(2) The results of any sampling, testing, or monitoring must be maintained for:

(A) at least one (1) year; or

(B) another reasonable period of time determined by the commissioner; except that the results of tank tightness testing conducted under section 4(3) of this rule must be retained until the next test is conducted.

(3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for:

(A) at least one (1) year after the servicing work is completed; or

(B) another reasonable period of time determined by the commissioner.

(4) Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five (5) years from the date of installation.

(Solid Waste Management Board; 329 IAC 9-7-6; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3727; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-7-7 Release detection certification of compliance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 7. The owner and operator shall demonstrate compliance with this rule by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under rules of the fire prevention and building safety commission at 675 IAC 12-12. *(Solid Waste Management Board; 329 IAC 9-7-7; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 8. Financial Responsibility

329 IAC 9-8-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 1. (a) This rule applies to owners and operators of all petroleum UST systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to this rule if they are in operation on or after the date for compliance established in section 2 of this rule.

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this rule.

(d) The requirements of this rule do not apply to an owner and operator of any UST system described in 329 IAC 9-1-1(b) or 329 IAC 9-1-1(c).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one (1) person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in section 2 of this rule. *(Solid Waste Management Board; 329 IAC 9-8-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-8-2 Compliance dates

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 2. Owners of petroleum underground storage tanks are required to comply with the requirements of this rule by the following dates:

(1) All petroleum marketing firms owning one thousand (1,000) or more underground storage tanks and all other underground storage tank owners that report a tangible net worth of twenty million dollars (\$20,000,000) or more to:

(A) the U.S. Securities and Exchange Commission (SEC);

(B) Dun and Bradstreet;

(C) the Energy Information Administration; or

(D) the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration);

by January 24, 1989, except that compliance with section 5(b) of this rule is required by July 24, 1989.

(2) All petroleum marketing firms owning one hundred (100) to nine hundred ninety-nine (999) underground storage tanks by October 26, 1989.

(3) All petroleum marketing firms owning thirteen (13) to ninety-nine (99) underground storage tanks at more than one (1)

facility by April 26, 1991.

(4) All petroleum underground storage tank owners not described in subdivision (1), (2), or (3), excluding local government entities by December 31, 1993.

(5) All local government entities, including Indian tribes, not included in subdivision (6) by February 18, 1994.

(6) Indian tribes that own underground storage tanks on Indian lands that meet the applicable technical requirements of this article by December 31, 1998.

(Solid Waste Management Board; 329 IAC 9-8-2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-3 Definitions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-13-1-1; IC 13-23-4-1; IC 13-23-4-2

Sec. 3. (a) The definitions in this section apply throughout this rule.

(b) "Accidental release" means any:

(1) sudden; or

(2) nonsudden;

release of petroleum from an underground storage tank that results in a need for corrective action or compensation or both for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(c) "Bodily injury" has the meaning given to this term by applicable state law; however, this term must not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(d) "Chief financial officer", in the case of a local government owner and operator, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(e) "Commissioner" means the commissioner of the department of environmental management as created under IC 13-13-1-1.

(f) "Controlling interest" means direct ownership of at least fifty percent (50%) of the voting stock of another entity.

(g) "Financial reporting year" means the latest consecutive twelve (12) month fiscal or calendar year period for which any of the following reports used to support a financial test is prepared:

(1) A 10-K report submitted to the U.S. Securities and Exchange Commission (SEC).

(2) An annual report of tangible net worth submitted to Dun and Bradstreet.

(3) Annual reports submitted to the Energy Information Administration or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration).

(h) "Legal defense cost" means any expense that an owner or operator, or provider of financial assurance incurs in defending against claims or actions brought by any of the following:

(1) By the United States Environmental Protection Agency (EPA) or Indiana to require corrective action or recover the costs of corrective action.

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release.

(3) By any person to enforce the terms of a financial assurance mechanism.

(i) "Local government" includes any of the following:

(1) City.

(2) County.

(3) County solid waste management district.

(4) Joint solid waste management district.

(5) Municipal corporation.

(6) Municipality.

(7) School corporation.

(8) Special district.

(9) Special taxing district.

(10) Town.

(11) Township.

(12) Unit.

(13) Indian tribe.

(14) Any other legal entity given this term by applicable state law.

(j) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank. The definition of this term is intended to assist in the understanding of this rule and is not intended either to limit the meaning of occurrence in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of occurrence.

(k) "Owner or operator", when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurance.

(l) "Petroleum marketing facilities" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(m) "Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(n) "Property damage" has the meaning given this term by applicable state law. This term must not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage must not include corrective action associated with releases from tanks covered by the policy.

(o) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one (1) of the mechanisms listed in sections 6 through 13 of this rule, including any of the following:

(1) Guarantor.

(2) Insurer.

(3) Risk retention group.

(4) Surety.

(5) Issuer of a letter of credit.

(6) Issuer of a state-required mechanism.

(7) State.

(p) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued incident to that relationship if it arises from a clear commonality of interest in the event of an underground storage tank release, including any of the following:

(1) Coterminous boundaries.

(2) Overlapping constituencies.

(3) Common ground water aquifer.

(4) Other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(q) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. As used in this subsection, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(r) "Termination", under section 8(b) of this rule, means only those changes that could result in a gap in coverage as where the insured has:

(1) not obtained substitute coverage; or

(2) obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(Solid Waste Management Board; 329 IAC 9-8-3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-4 Amount and scope of required financial responsibility

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 4. (a) An owner or operator of a petroleum underground storage tank shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank in a per occurrence amount of at least one million dollars (\$1,000,000).

(b) An owner or operator of a petroleum underground storage tank shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank in at least the following annual aggregate amounts:

(1) For an owner or operator of one (1) to one hundred (100) petroleum underground storage tanks, one million dollars (\$1,000,000).

(2) For an owner or operator of one hundred one (101) or more petroleum underground storage tanks, two million dollars (\$2,000,000).

(c) As used in subsections (b) and (f), "petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases;

the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required must be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) The owner or operator shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. The owner or operator shall complete the following:

(1) If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred (100), the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility has become effective.

(2) If assurance is demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the first occurring effective date anniversary of any one (1) of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. (*Solid Waste Management Board; 329 IAC 9-8-4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3730; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-5 Allowable mechanisms and combinations of mechanisms

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 5. (a) Subject to the limitations of subsections (b) and (c), an owner or operator may use the following to demonstrate financial responsibility:

(1) An owner or operator, including a local government owner or operator, may use any one (1) or combination of the mechanisms listed in sections 6 through 13 of this rule to demonstrate financial responsibility under this rule for one (1) or more underground storage tanks.

(2) A local government owner or operator may use any one (1) or combination of the mechanisms listed in sections 14 through 17 of this rule to demonstrate financial responsibility under this rule for one (1) or more underground storage tanks.

(b) An owner or operator may use a:

(1) guarantee under section 7 or 11(c)(8) of this rule; or

(2) surety bond under section 9 of this rule;

to establish financial responsibility only if the attorney general of Indiana has submitted a written statement to the commissioner that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in Indiana.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the

requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. (*Solid Waste Management Board; 329 IAC 9-8-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3730; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-6 Financial test of self-insurance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 6. (a) An:

- (1) owner or operator and guarantor;
- (2) owner or operator; or
- (3) guarantor;

may satisfy the requirements of section 4 of this rule by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator and guarantor, the owner or operator, or the guarantor shall meet the criteria of subsection (b) or (c) based on year end financial statements for the latest completed fiscal year.

(b) The owner or operator and guarantor, the owner or operator, or the guarantor shall complete the following:

(1) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a tangible net worth of at least ten (10) times:

(A) the total of the applicable aggregate amount required by:

- (i) section 4 of this rule, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the commissioner under this rule; or
- (ii) the EPA under 40 CFR 280.93 and 40 CFR 280.95;

(B) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to:

- (i) the commissioner under 329 IAC 3.1-9, 329 IAC 3.1-14, and 329 IAC 3.1-15; or
- (ii) the EPA under:

- (AA) 40 CFR 264.101;
- (BB) 40 CFR 264.143;
- (CC) 40 CFR 264.145;
- (DD) 40 CFR 264.147;
- (EE) 40 CFR 265.143;
- (FF) 40 CFR 265.145; and
- (GG) 40 CFR 265.147; and

(C) the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility:

- (i) under a state program authorized by the EPA under 40 CFR 145; or
- (ii) to the EPA under 40 CFR 144.63.

(2) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000).

(3) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a letter signed by the chief financial officer worded as specified in subsection (d).

(4) The owner or operator and guarantor, the owner or operator, or the guarantor shall complete either of the following:

(A) File financial statements annually with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Utilities Service of the United States Department Of Agriculture (formerly the Rural Electrification Administration).

(B) Report annually the firm's tangible net worth to Dun and Bradstreet. Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year end financial statements, if independently audited, cannot include:

- (A) an adverse auditor's opinion;
- (B) a disclaimer of opinion; or
- (C) a going concern qualification.

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(c) The owner or operator and guarantor, the owner or operator, or the guarantor shall complete the following:

(1) The owner or operator and guarantor, the owner or operator, or the guarantor shall meet the financial test requirements of 40 CFR 265.147(f)(1), substituting the appropriate amounts specified in section 4(b) of this rule for the amount of liability coverage each time specified in that section. 40 CFR 265.147(f)(1), revised as of July 1, 1997, is incorporated by reference. The Code of Federal Regulations is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(2) The fiscal year end financial statements of the owner or operator and guarantor, the owner or operator, or the guarantor must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year end financial statements cannot include:

- (A) an adverse auditor's opinion;
- (B) a disclaimer of opinion; or
- (C) a going concern qualification.

(4) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a letter signed by the chief financial officer, worded as specified in subsection (d).

(5) If the financial statements of the owner or operator and guarantor, the owner or operator, or the guarantor are not submitted annually to the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration), the owner or operator and guarantor, the owner or operator, or the guarantor shall obtain a special report by an independent certified public accountant stating that:

- (A) the independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year end financial statements of the owner or operator and guarantor, the owner or operator, or the guarantor with the amounts in such financial statements; and
- (B) in connection with that comparison, no matters came to the attention that caused the certified public accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator or guarantor shall sign, within one hundred twenty (120) days of the close of each financial reporting year as defined by the twelve (12) month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance" or "guarantee" or both of those phrases] to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, a financial test under an authorized state program, or a financial test under the United States Environmental Protection Agency (EPA) regulations by this [insert "owner or operator" or "guarantor" or both of those phrases]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test, a financial test under a state program approved under 40 CFR 281, or a financial test under EPA under 40 CFR 280.95. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test, a financial test under a state program authorized under 40 CFR 281, or a financial test under EPA under 40 CFR 280.95 by the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, the applicable regulation of a state program authorized under 40 CFR 281, or EPA under 40 CFR 280.22.]

A [insert "financial test" or "guarantee" or both of those phrases] is also used by this [insert "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR 271 and 40 CFR 145:

Indiana Rules	Amount
Closure (329 IAC 3.1-14-4 through 329 IAC 3.1-14-12 and 329 IAC 3.1-15-4)	\$ _____
Post-Closure Care (329 IAC 3.1-14-14 through	

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329 IAC 3.1-14-22 and 329 IAC 3.1-15-6)	\$ ____
Liability Coverage (329 IAC 3.1-14-24 and 329 IAC 3.1-15-8)	\$ ____
Corrective Action (329 IAC 3.1-9-1)	\$ ____
Authorized State Rules under 40 CFR 145	
Plugging and Abandonment	\$ ____
EPA Regulations	
Closure (40 CFR 264.143 and 40 CFR 265.143)	\$ ____
Post-Closure Care (40 CFR 264.145 and 40 CFR 265.145)	\$ ____
Liability Coverage (40 CFR 264.147 and 40 CFR 265.147)	\$ ____
Corrective Action (40 CFR 264.101(b))	\$ ____
Plugging and Abandonment (40 CFR 144.63)	\$ ____
Total	\$ ____

This [insert "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a going concern qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 329 IAC 9-8-6(b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 329 IAC 9-8-6(c) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test or guarantee or both	\$ ____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee or both	\$ ____
3. Sum of lines 1 and 2	\$ ____
4. Total tangible assets	\$ ____
5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6)	\$ ____
6. Tangible net worth (subtract line 5 from line 4)	\$ ____
	Yes No
7. Is line 6 at least \$10 million?	___ ___
8. Is line 6 at least 10 times line 3?	___ ___
9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission (SEC)?	___ ___
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	___ ___
11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service of the United States Department Of Agriculture (formerly the Rural Electrification Administration)?	___ ___
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A?	___ ___
(Answer "Yes" only if both criteria have been met.)	

Alternative II

1. Amount of annual UST aggregate coverage being assured by a financial test or guarantee or both	\$ ____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee or both	\$ ____
3. Sum of lines 1 and 2	\$ ____
4. Total tangible assets	\$ ____
5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6)	\$ ____
6. Tangible net worth (subtract line 5 from line 4)	\$ ____
7. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ ____
	Yes No
8. Is line 6 at least \$10 million?	___ ___

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- 9. Is line 6 at least 6 times line 3? ___ ___
- 10. Are at least 90 percent of assets located in the U.S.? (If "No," complete line 11.) ___ ___
- 11. Is line 7 at least 6 times line 3? ___ ___
- [Fill in either lines 12-15 or lines 16-18]
- 12. Current assets \$ ___
- 13. Current liabilities \$ ___
- 14. Net working capital (subtract line 13 from line 12) \$ ___

Yes No

- 15. Is line 14 at least 6 times line 3? ___ ___
- 16. Current bond rating of most recent bond issue ___ ___
- 17. Name of rating service ___ ___
- 18. Date of maturity of bond ___ ___
- 19. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration)? ___ ___

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-6(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that the owner no longer meets the requirements of the financial test based on the year end financial statements, the owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the end of the year for which financial statements have been prepared.

(f) The commissioner may require reports of financial condition at any time from the owner or operator and guarantor, the owner or operator, or the guarantor. If the commissioner finds, on the basis of such reports or other information, that the owner or operator and guarantor, the owner or operator, or the guarantor no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within:

(1) one hundred fifty (150) days of finding that the owner no longer meets the requirements of the financial test based on the year end financial statements; or

(2) thirty (30) days of notification by the commissioner that the owner no longer meets the requirements of the financial test; the owner or operator shall notify the commissioner of such failure within ten (10) days. (Solid Waste Management Board; 329 IAC 9-8-6; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3731; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-7 Guarantee

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 7. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining a guarantee that conforms to this section. The guarantor shall be a firm that:

- (1) possesses a controlling interest in the owner or operator;
- (2) possesses a controlling interest in a firm described under subdivision (1); or
- (3) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator.

(b) The guarantor shall complete the following:

(1) Within one hundred twenty (120) days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of section 6 of this rule based on year end financial statements for the latest completed

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financial reporting year by completing the letter from the chief financial officer described in section 6(d) of this rule and shall deliver the letter to the owner or operator.

(2) If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty (120) days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator.

(3) If the commissioner notifies the guarantor that the guarantor no longer meets the requirements of the financial test of section 6(b) or 6(c) and 6(d) of this rule, the guarantor shall notify the owner or operator within ten (10) days of receiving such notification from the commissioner.

As used in subdivisions (2) and (3), the guarantee terminates no less than one hundred twenty (120) days after the date the owner or operator receives the notification as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in section 20(c) of this rule.

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [insert name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the Indiana Department of Environmental Management (IDEM) and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria of 329 IAC 9-8-6(b) or 329 IAC 9-8-6(c) and 329 IAC 9-8-6(d) and agrees to comply with the requirements for guarantors as specified in 329 IAC 9-8-7(b).

2. [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.] This guarantee satisfies 329 IAC 9-8 requirements for assuring funding for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

3. [Insert appropriate phrase "On behalf of our subsidiary" (if guarantor is a corporate parent of the owner or operator) or "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator)] [owner or operator], guarantor guarantees to IDEM and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the IDEM commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the IDEM commissioner, shall fund a standby trust fund in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

In the event that the IDEM commissioner determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 329 IAC 9-5, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" or "nonsudden" or both of those phrases] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust in accordance with the provisions of 329 IAC 9-8-22 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 329 IAC 9-8-6(b) or 329 IAC 9-8-6(c) and 329 IAC 9-8-6(d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator] as evidenced by the return receipt.

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5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.), naming guarantor as debtor, within 10 days after commencement of the proceeding.
6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 329 IAC 9.
7. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 329 IAC 9-8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator] as evidenced by the return receipt.
8. The guarantor's obligation does not apply to any of the following:
 - (a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
 - (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator].
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
 - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
 - (e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.
9. Guarantor expressly waives notice of acceptance of this guarantee by IDEM, by any or all third parties, or by [owner or operator]. I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 9-8-7(c) as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy section 4 of this rule shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts that are paid by the guarantor under the guarantee must be deposited directly into the standby trust fund in accordance with instructions from the commissioner under section 22 of this rule. This standby trust fund must meet the requirements specified in section 13 of this rule. (*Solid Waste Management Board; 329 IAC 9-8-7; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3734; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-8 Insurance and risk retention group coverage

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 8. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining liability insurance that conforms to this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in subdivision (1) or evidenced by a certificate of insurance worded as specified in subdivision (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) Endorsement

Name: [insert name of each covered location]

Address: [insert address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

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Name of Insured:
Address of Insured:

Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.]

For [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, or for each underground storage tank or location, or for each type of coverage and for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e).

a. Bankruptcy or insolvency of the Insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the Insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 329 IAC 9-8-6 through 329 IAC 9-8-12.

c. Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the ["Insurer" or "Group"] agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Insured. Cancellation for nonpayment of premium or misrepresentation by the Insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the Insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six (6) months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 329 IAC 9-8-8(b)(1) and that the ["Insurer" or "Group"] is [insert "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of representative]

(2) Certificate of Insurance

Name: [insert name of each covered location]

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Address: [insert address of each covered location]
Policy Number:
Endorsement (if applicable):
Period of Coverage: [current policy period]
Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Certification

1. [Insert name of Insurer or Risk Retention Group], [the “Insurer” or “Group”], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.]

For [insert “taking corrective action” or “compensating third parties for bodily injury and property damage caused by” or “taking corrective action and compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, or for each underground storage tank or location, or for each type of coverage and for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The [“Insurer” or “Group”] further certifies the following with respect to the insurance described in paragraph 1:

a. Bankruptcy or insolvency of the Insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this certificate applies.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the Insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 329 IAC 9-8-6 through 329 IAC 9-8-12.

c. Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the [“Insurer” or “Group”] agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for nonpayment of premium or misrepresentation by the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Insured. Cancellation for nonpayment of premium or misrepresentation by the Insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the Insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six (6) months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 329 IAC 9-8-8(b)(2) and that the [“Insurer” or “Group”] is [insert “licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states”].

[Signature of authorized representative of Insurer]

[Type name]

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[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of representative]

(c) Each insurance policy must be issued by an Insurer or a Risk Retention Group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one (1) or more states. (Solid Waste Management Board; 329 IAC 9-8-8; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3736; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-9 Surety bond

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 9. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining a surety bond that conforms to this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds by the United States department of the treasury in the most current edition of Circular 570.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed:

Period of coverage:

Principal: [insert legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation (if applicable):

Surety(ies): [insert name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank."]

Penal sums of bond:

Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Indiana Department of Environmental Management (IDEM), in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984 and the Superfund Amendments and Reauthorization Act (SARA) of 1986, to provide financial assurance for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [insert "take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions, caused by" or "compensate injured third parties for bodily

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injury and property damage caused by” or “take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner’s instructions, and compensate injured third parties for bodily injury and property damage caused by” either “sudden” or “nonsudden” or “sudden and nonsudden”] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 329 IAC 9-8, within one hundred twenty (120) days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law.
- (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator].
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- (e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the IDEM commissioner that the Principal has failed to [insert “take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner’s instructions,” or “compensate injured third parties” or “take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner’s instructions, and compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [insert “corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner’s instructions,” or “third party liability compensation” or “corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner’s instructions, and third party liability compensation”] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the IDEM commissioner under 329 IAC 9-8-22.

Upon notification by the IDEM commissioner that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the IDEM commissioner has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the IDEM commissioner under 329 IAC 9-8-22.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this bond and have affixed their seals on the date set forth above. The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 9-8-9(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
[State of Incorporation: ____]
[Liability limit: \$ ____]

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[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

(Note: The corporate seal is not required by Indiana law.)

(c) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 4 of this rule shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond must be deposited directly into the standby trust fund in accordance with instructions from the commissioner under section 22 of this rule. This standby trust fund must meet the requirements specified in section 13 of this rule. (*Solid Waste Management Board; 329 IAC 9-8-9; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3738; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-10 Letter of credit

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 10. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining an irrevocable standby letter of credit that conforms to this section. The issuing institution must be an entity:

- (1) that has the authority to issue letters of credit in each state where used; and
- (2) whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Insert name and address of issuing institution]

[Insert name and business address of the commissioner of the Indiana Department of Environmental Management (IDEM)]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of [insert name of owner or operator] of [address] up to the aggregate amount of [insert in words] U.S. dollars (\$ [insert dollar amount]), available upon presentation [insert, if more than one (1) director of a state implementing agency is a beneficiary, "by any one of you"] of:

1. your sight draft, bearing reference to this letter of credit, No. ____; and
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984 and the Superfund Amendments and Reauthorization Act (SARA) of 1986."

This letter of credit may be drawn on to cover [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [insert in words] (\$ [insert dollar amount]) per occurrence and [insert in words] (\$ [insert dollar amount]) annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- a. Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator].
- c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
- d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.

e. Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by [owner or operator] as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 329 IAC 9-8-10(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce” or “the Uniform Commercial Code, as adopted under state law governing the issuance and use of this letter of credit”].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 4 of this rule also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts that are paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner under section 22 of this rule. This standby trust fund must meet the requirements specified in section 13 of this rule.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty (120) days begins on the date when the owner or operator receives the notice as evidenced by the return receipt. (*Solid Waste Management Board; 329 IAC 9-8-10; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3740; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-11 Excess liability trust fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2; IC 13-23-8-3

Sec. 11. (a) An owner or operator may satisfy the requirements of section 4 of this rule by participation in the excess liability trust fund under 328 IAC 1. Eligibility is determined by compliance with 328 IAC 1.

(b) An owner or operator of:

(1) twelve (12) or fewer underground storage tanks shall demonstrate the ability to pay the applicable deductible amount under IC 13-23-8-3; or

(2) more than twelve (12) underground storage tanks shall demonstrate the ability to pay two (2) times the applicable deductible amount under IC 13-23-8-3.

(c) The owner or operator shall use any one (1) or a combination of the following mechanisms to demonstrate the ability to pay the applicable amount under subsection (b):

(1) An owner or operator may satisfy the requirements of subsection (b) by obtaining a letter signed by an officer of a federally insured financial institution that verifies the financial institution’s commitment to issue a loan to the owner or operator, if necessary, to pay the applicable amount under subsection (b). This letter must be reviewed and updated annually by the financial institution.

(2) An owner or operator may satisfy the requirements of subsection (b) by obtaining a certificate of deposit from a federally insured financial institution.

(3) An owner or operator may satisfy the requirements of subsection (b) by obtaining a letter signed by an independent certified

public accountant or independent professional accountant that verifies the tangible net worth of the owner or operator is sufficient to pay the applicable amount under subsection (b). This letter must be reviewed and updated annually by the certified public accountant or professional accountant.

(4) An owner or operator may satisfy the requirements of subsection (b) by obtaining liability insurance from an insurer or risk retention group.

(5) An owner or operator may satisfy the requirements of subsection (b) by obtaining a surety bond.

(6) An owner or operator may satisfy the requirements of subsection (b) by obtaining an irrevocable standby letter of credit issued by a federally insured financial institution.

(7) An owner or operator may satisfy the requirements of subsection (b) by establishing a trust fund.

(8) An owner or operator may satisfy the requirements of subsection (b) by obtaining a written guarantee from a person other than the owner or operator that verifies the guarantor's ability to pay the applicable amount under subsection (b). The written guarantee must disclose the relationship between the guarantor, and the owner or operator. The guarantor shall use one (1) or more of the mechanisms under this subsection.

(d) In addition to subsection (c), local government owners or operators may use any one (1) or a combination of the following mechanisms:

(1) A local government owner or operator may satisfy the requirements of subsection (b) by meeting a bond rating test under section 14 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(2) A local government owner or operator may satisfy the requirements of subsection (b) by passing the financial test specified in section 15 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(3) A local government owner or operator may satisfy the requirements of subsection (b) by obtaining a guarantee that conforms to section 16 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee with standby trust made by a local government. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee without standby trust made by a local government.

(4) A local government owner or operator may satisfy the requirements of subsection (b) by establishing a dedicated fund account that conforms to section 17 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(Solid Waste Management Board; 329 IAC 9-8-11; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3741; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-12 Trust fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 12. (a) An owner or operator may satisfy the requirements of section 4 of this rule by establishing a trust fund that conforms to this section. The trustee must be an entity:

(1) that has the authority to act as a trustee; and

(2) whose trust operations are regulated and examined by:

(A) a federal agency; or

(B) an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be:

(1) identical to the wording specified in section 13(b) of this rule; or

(2) accompanied by a formal certification of acknowledgment as specified in section 13(c) and 13(d) of this rule.

(c) The trust fund, when established, must be funded for:

(1) the full required amount of coverage; or

(2) part of the required amount of coverage and used in combination with another mechanism that provides the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the commissioner for release of the excess.

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(e) If other financial assurance as specified in this rule is substituted for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the excess.

(f) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing. (*Solid Waste Management Board; 329 IAC 9-8-12; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3742; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-13 Standby trust fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 13. (a) An owner or operator that uses any one (1) of the mechanisms authorized by section 7, 9, 10, 11(c)(2), or 11(c)(7) of this rule shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity:

- (1) that has the authority to act as a trustee; and
- (2) whose trust operations are regulated and examined by:
 - (A) a federal agency; or
 - (B) an agency of the state in which the fund is established.

(b) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement", entered into as of [date] by and between [insert name of the owner or operator], a [insert name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [insert name of corporate trustee], [insert "Incorporated in the state of ___" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management (IDEM), an agency of Indiana, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the Agreement.

[Whereas, the Grantor has elected to establish a [insert either "guarantee" or "surety bond" or "letter of credit" or "certificate of deposit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

- a. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- b. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial
Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, letter of credit, or certificate of deposit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of IDEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the IDEM

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commissioner's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits therein, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by IDEM.

Section 4. Payment for [insert "Corrective Action" or
"Third Party Liability Claims" or "Corrective
Action and Third Party Liability Claims"]

The Trustee shall make payments from the Fund as the IDEM commissioner shall direct, in writing, to provide for the payment of the costs of [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- a. Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator].
- c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
- d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- e. Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.

The Trustee shall reimburse the Grantor, or other persons as specified by the IDEM commissioner, from the Fund for corrective action expenditures or third party liability claims or both in such amounts as the IDEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IDEM commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- a. securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the federal or a state government;
- b. the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- c. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest therein.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- a. to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- b. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et

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seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- a. to sell, exchange, convey, transfer, or otherwise dispose of any property held by it by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- b. to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- c. to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- d. to deposit any cash in the Fund in interest bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- e. to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee shall be in writing, signed by the IDEM commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM commissioner hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or the IDEM commissioner or both, except as provided

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for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 9-8-13(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(c) The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following:

Certification of Acknowledgment

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(d) The following is an example of the Indiana form of acknowledgment. (Standby trust agreements, or trust agreements, notarized in Indiana must use this form of acknowledgment.):

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Form of Indiana certification of acknowledgment.

ACKNOWLEDGMENT

State of _____

County of _____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199_.

State of: _____

County of residence: _____

Notary Public

Commission Expires: _____

(c) The commissioner shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the commissioner determines that no additional:

- (1) corrective action costs; or
(2) third party liability claims;

will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund has been established. If the balance of the standby trust fund includes funds received from a certificate of deposit, the commissioner shall instruct the trustee to refund the balance received from the certificate of deposit to the owner or operator under section 11(c)(7)(I) of this rule.

(d) An owner or operator may establish one (1) trust fund as the depository mechanism for all funds assured in compliance with this rule. (Solid Waste Management Board; 329 IAC 9-8-13; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-14 Local government bond rating test

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 14. (a) A:

- (1) general purpose local government owner or operator and general purpose local government serving as a guarantor;
(2) general purpose local government owner or operator; or
(3) general purpose local government serving as a guarantor;

may satisfy the requirements of section 4 of this rule by having a currently outstanding issue or issues of general obligation bonds of one million dollars (\$1,000,000) or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard & Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement, other than municipal bond insurance, must not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that:

- (1) is not a general purpose local government; and
(2) does not have the legal authority to issue general obligation bonds;

may satisfy the requirements of section 4 of this rule by having a currently outstanding issue or issues of revenue bonds of one million dollars (\$1,000,000) or more, excluding refunded issues, and having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement must not be considered in determining the amount of applicable bonds outstanding.

(c) The:

- (1) local government owner or operator and local government guarantor;

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- (2) local government owner or operator; or
- (3) local government guarantor;

shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

- (d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a:
 - (1) general purpose local government owner or operator and general purpose local government serving as a guarantor;
 - (2) general purpose local government owner or operator; or
 - (3) general purpose local government serving as a guarantor;

shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of local government owner or operator or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [insert name of local government owner or operator or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency [Moody's or Standard & Poor's]
------------	---------------	--------------------	-------------	--

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of one million dollars (\$1,000,000). All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-14(d) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (e) To demonstrate that it meets the local government bond rating test, the chief financial officer of a:
 - (1) local government owner or operator other than a general purpose government and guarantor other than a general purpose government;
 - (2) local government owner or operator other than a general purpose government; or
 - (3) guarantor other than a general purpose government;

shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of local government owner or operator or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility the name and address of the facility where tanks are assured by the bond rating test.]

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The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [insert name of local government owner or operator or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency [Moody's or Standard & Poor's]
------------	---------------	--------------------	-------------	--

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of one million dollars (\$1,000,000). All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. The revenue bonds listed are not backed by third party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-14(e) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (f) The commissioner may require reports of financial condition at any time from the:
 - (1) local government owner or operator and local government guarantor;
 - (2) local government owner or operator; or
 - (3) local government guarantor.

If the commissioner finds, on the basis of such reports or other information, that the local government owner or operator and local government guarantor, the local government owner or operator, or the local government guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within thirty (30) days after notification of such a finding.

(g) If a local government owner or operator that uses the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the change in status. (*Solid Waste Management Board; 329 IAC 9-8-14; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3747; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-15 Local government financial test

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 15. (a) A local government owner or operator may satisfy the requirements of section 4 of this rule by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to:

- (1) assess and levy taxes; or
- (2) freely establish fees and charges.

To pass the local government financial test, the owner or operator shall meet the criteria of subsection (b)(2) and (b)(3) based on year end financial statements for the latest completed fiscal year.

(b) The local government owner or operator shall complete the following:

(1) The local government owner or operator shall have the following information available, as shown in the year end financial statements, for the latest completed fiscal year:

(A) Total revenues that consist of the sum of general fund operating and nonoperating revenues, including the following:

- (i) Net local taxes.
- (ii) Licenses and permits.
- (iii) Fines and forfeitures.

- (iv) Revenues from the use of money and property.
- (v) Charges for services.
- (vi) Investment earnings.
- (vii) Sales, that may include any of the following:
 - (AA) Property.
 - (BB) Publications.
- (viii) Intergovernmental revenues (restricted and unrestricted).
- (ix) Total revenues from all other governmental funds, including:
 - (AA) enterprise;
 - (BB) debt service;
 - (CC) capital projects; and
 - (DD) special revenues;

but excluding revenues to funds held in a trust or agency capacity.

For purposes of this test, the calculation of total revenues must exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(B) Total expenditures that consist of the sum of general fund operating and nonoperating expenditures, including the following:

- (i) Public safety.
- (ii) Public utilities.
- (iii) Transportation.
- (iv) Public works.
- (v) Environmental protection.
- (vi) Cultural and recreational.
- (vii) Community development.
- (viii) Revenue sharing.
- (ix) Employee benefits and compensation.
- (x) Office management.
- (xi) Planning and zoning.
- (xii) Capital projects.
- (xiii) Interest payments on debt.
- (xiv) Payments for retirement of debt principal.
- (xv) Total expenditures from all other governmental funds, including the following:
 - (AA) Enterprise.
 - (BB) Debt service.
 - (CC) Capital projects.
 - (DD) Special revenues.

For purposes of this test, the calculation of total expenditures must exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(C) Local revenues that consist of total revenues, as defined in clause (A), minus the sum of all transfers from other governmental entities, including all monies received from any of the following:

- (i) Federal sources.
- (ii) State sources.
- (iii) Local government sources.

(D) Debt service that consists of the sum of all interest and principal payments on all long term credit obligations and all interest bearing short term credit obligations, including interest and principal payments on the following:

- (i) General obligation bonds.
- (ii) Revenue bonds.
- (iii) Notes.
- (iv) Mortgages.
- (v) Judgments.

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(vi) Interest bearing warrants.

Debt service excludes payments on noninterest bearing short term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(E) Total funds that consist of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Total funds include the following:

- (i) Federal securities.
- (ii) Federal agency securities.
- (iii) State and local government securities.
- (iv) Other securities such as bonds, notes, and mortgages.

For purposes of this test, the calculation of total funds must exclude agency funds, private trust funds, accounts receivable, value of real property, and other nonsecurity assets.

(F) Population that consists of the number of people in the area served by the local government.

(2) The local government's year end financial statements, if independently audited, must not include an adverse auditor's opinion or a disclaimer of opinion. The local government shall not have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator shall sign, within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12) month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test: [List for each facility the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2.]

This owner or operator has not received an adverse opinion or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard & Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard & Poor's rating of AAA, AA, A, or BBB.

Worksheet for Municipal Financial Test

Part I: Basic Information

1. Total revenues

a. Revenues (dollars) _____

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and nonoperating revenues, as well as all revenues from all other governmental funds, including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars) _____

c. Total revenues (dollars) _____

2. Total expenditures

a. Expenditures (dollars) _____

Value consists of the sum of general fund operating and nonoperating expenditures, including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds, including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars) _____

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- c. Total expenditures (dollars) _____
- 3. Local revenues
 - a. Total revenues (from 1c) (dollars) _____
 - b. Subtract total intergovernmental transfers (dollars) _____
 - c. Local revenues (dollars) _____
- 4. Debt service
 - a. Interest and fiscal charges (dollars) _____
 - b. Add debt retirement (dollars) _____
 - c. Total debt service (dollars) _____
- 5. Total funds (dollars) _____
(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds.)
- 6. Population (persons) _____

Part II: Application of Test

- 7. Total revenues to population
 - a. Total revenues (from 1c) _____
 - b. Population (from 6) _____
 - c. Divide 7a by 7b _____
 - d. Subtract 417 _____
 - e. Divide by 5,212 _____
 - f. Multiply by 4.095 _____
- 8. Total expenses to population
 - a. Total expenses (from 2c) _____
 - b. Population (from 6) _____
 - c. Divide 8a by 8b _____
 - d. Subtract 524 _____
 - e. Divide by 5,401 _____
 - f. Multiply by 4.095 _____
- 9. Local revenues to total revenues
 - a. Local revenues (from 3c) _____
 - b. Total revenues (from 1c) _____
 - c. Divide 9a by 9b _____
 - d. Subtract .695 _____
 - e. Divide by .205 _____
 - f. Multiply by 2.840 _____
- 10. Debt service to population
 - a. Debt service (from 4c) _____
 - b. Population (from 6) _____
 - c. Divide 10a by 10b _____
 - d. Subtract 51 _____
 - e. Divide by 1,038 _____
 - f. Multiply by -1.866 _____
- 11. Debt service to total revenues
 - a. Debt service (from 4c) _____
 - b. Total revenues (from 1c) _____
 - c. Divide 11a by 11b _____
 - d. Subtract .068 _____
 - e. Divide by .259 _____
 - f. Multiply by -3.533 _____
- 12. Total revenues to total expenses
 - a. Total revenues (from 1c) _____

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- b. Total expenses (from 2c) _____
 - c. Divide 12a by 12b _____
 - d. Subtract .910 _____
 - e. Divide by .899 _____
 - f. Multiply by 3.458 _____
13. Funds balance to total revenues
- a. Total funds (from 5) _____
 - b. Total revenues (from 1c) _____
 - c. Divide 13a by 13b _____
 - d. Subtract .891 _____
 - e. Divide by 9.156 _____
 - f. Multiply by 3.270 _____
14. Funds balance to total expenses
- a. Total funds (from 5) _____
 - b. Total expenses (from 2c) _____
 - c. Divide 14a by 14b _____
 - d. Subtract .866 _____
 - e. Divide by 6.409 _____
 - f. Multiply by 3.270 _____
15. Total funds to population
- a. Total funds (from 5) _____
 - b. Population (from 6) _____
 - c. Divide 15a by 15b _____
 - d. Subtract 270 _____
 - e. Divide by 4,548 _____
 - f. Multiply by 1.866 _____
16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937 _____

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 329 IAC 9-8-15(c) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(d) If a local government owner or operator that uses the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year end financial statements, the owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the end of the year for which financial statements have been prepared.

(e) The commissioner may require reports of financial condition at any time from the local government owner or operator. If the commissioner finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within:

(1) one hundred fifty (150) days of finding that it no longer meets the requirements of the financial test based on the year end financial statements; or

(2) thirty (30) days of notification by the commissioner that it no longer meets the requirements of the financial test;

the owner or operator shall notify the commissioner of such failure within ten (10) days. (*Solid Waste Management Board; 329 IAC 9-8-15; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3749; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-16 Local government guarantee

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

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Sec. 16. (a) A local government owner or operator may satisfy the requirements of section 4 of this rule by obtaining a guarantee that conforms to this section. The guarantor must be a local government that has a substantial governmental relationship with the owner and operator and issues the guarantee as an act incident to that relationship. A local government that acts as the guarantor shall complete any of the following:

- (1) Demonstrate that it meets the bond rating test requirement of section 14 of this rule and deliver a copy of the chief financial officer's letter as contained in section 14(d) of this rule to the local government owner or operator.
- (2) Demonstrate that it meets the worksheet test requirements of section 15 of this rule and deliver a copy of the chief financial officer's letter as contained in section 15(c) of this rule to the local government owner or operator.
- (3) Demonstrate that it meets the local government fund requirements of section 17(a)(1), 17(a)(2), or 17(a)(3) of this rule and deliver a copy of the chief financial officer's letter as contained in section 17 of this rule to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 14, 15, 17(a)(1), 17(a)(2), or 17(a)(3) of this rule, at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee must terminate no less than one hundred twenty (120) days after the date the owner or operator receives the notification as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in section 20(c) of this rule.

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

- (1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the commissioner, the guarantee must be worded as specified in subsection (d).
- (2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the commissioner for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee must be worded as specified in subsection (e).

(d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee with Standby
Trust Made by a Local Government

Guarantee made this [date] by [insert name of guaranteeing entity], a local government organized under the laws of [insert name of state], herein referred to as guarantor, to the Indiana Department of Environmental Management (IDEM) and to any and all third parties, and obligees, on behalf of [local government owner or operator].

Recitals

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of 329 IAC 9-8-14, the local government financial test requirements of 329 IAC 9-8-15, or the local government fund under 329 IAC 9-8-17(a)(1), 329 IAC 9-8-17(a)(2), or 329 IAC 9-8-17(a)(3)].

2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.] This guarantee satisfies 329 IAC 9-8 requirements for assuring funding for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

3. Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to IDEM and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the IDEM commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the IDEM commissioner, shall fund a standby trust fund in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

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In the event that the IDEM commissioner determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 329 IAC 9-5, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust fund in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" or "nonsudden" or both] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust in accordance with the provisions of 329 IAC 9-8-22 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [local government owner or operator] as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.), naming guarantor as debtor within ten (10) days after commencement of the proceeding.

6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 329 IAC 9.

7. Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 329 IAC 9-8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by [owner or operator] as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

- a. Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [local government owner or operator] arising from, and in the course of, employment by [local government owner or operator].
- c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
- d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- e. Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.

9. Guarantor expressly waives notice of acceptance of this guarantee by IDEM, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 9-8-16(d) as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee without Standby

Trust Made by a Local Government

Guarantee made this [date] by [insert name of guaranteeing entity], a local government organized under the laws of [insert name of state], herein referred to as guarantor, to the Indiana Department of Environmental Management (IDEM) and to any and all third parties, and obligees, on behalf of [local government owner or operator].

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Recitals

1. Guarantor meets or exceeds [select one (1): the local government bond rating test requirements of 329 IAC 9-8-14, the local government financial test requirements of 329 IAC 9-8-15, or the local government fund under 329 IAC 9-8-17(a)(1), 329 IAC 9-8-17(a)(2), or 329 IAC 9-8-17(a)(3)].
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.] This guarantee satisfies 329 IAC 9-8 requirements for assuring funding for [insert “taking corrective action” or “compensating third parties for bodily injury and property damage caused by” or “taking corrective action and compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.
3. Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to IDEM and to any and all third parties and obligees that:
In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the IDEM commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the IDEM commissioner, shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.
In the event that the IDEM commissioner determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 329 IAC 9-5, the guarantor, upon written instructions from the IDEM commissioner, shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.
If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert “sudden” or “nonsudden” or both] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the IDEM commissioner, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.
4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [local government owner or operator] as evidenced by the return receipt.
5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.), naming guarantor as debtor within ten (10) days after commencement of the proceeding.
6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 329 IAC 9.
7. Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 329 IAC 9-8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by [owner or operator] as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.
8. The guarantor’s obligation does not apply to any of the following:
 - a. Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law.
 - b. Bodily injury to an employee of [local government owner or operator] arising from, and in the course of, employment by [local government owner or operator].
 - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

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d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank.

e. Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.

9. Guarantor expressly waives notice of acceptance of this guarantee by IDEM, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 9-8-16(e) as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(Solid Waste Management Board; 329 IAC 9-8-16; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3752; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-17 Local government fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 17. (a) A local government owner or operator may satisfy the requirements of section 4 of this rule by establishing a dedicated fund account that conforms to this section. Except as specified in subdivision (2), a dedicated fund must not be commingled with other funds or otherwise used in normal operations. A dedicated fund is considered eligible if it meets one (1) of the following requirements:

(1) The fund is:

(A) dedicated by:

(i) state constitutional provision; or

(ii) local government:

(AA) statute;

(BB) charter;

(CC) ordinance; or

(DD) order;

(B) established to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; and

(C) funded for:

(i) the full amount of coverage required under section 4 of this rule; or

(ii) part of the required amount of coverage and used in combination with another mechanism that provides the remaining coverage.

(2) The fund is:

(A) dedicated by:

(i) state constitutional provision; or

(ii) local government:

(AA) statute;

(BB) charter;

(CC) ordinance; or

(DD) order;

(B) established as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; and

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(C) funded for either of the following:

- (i) Five (5) times the full amount of coverage required under section 4 of this rule.
- (ii) Part of the required amount of coverage and used in combination with another mechanism that provides the remaining coverage. If the fund is funded for less than five (5) times the amount of coverage required under section 4 of this rule, the amount of financial responsibility demonstrated by the fund must not exceed one-fifth ($1/5$) the amount in the fund.

(3) The following requirements must be completed:

(A) The fund is dedicated by:

- (i) state constitutional provision; or
- (ii) local government:
 - (AA) statute;
 - (BB) charter;
 - (CC) ordinance; or
 - (DD) order.

(B) The fund is established to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

(C) A payment is made to the fund once every year for seven (7) years until the fund is fully funded. This seven (7) year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by the following formula:

$$\frac{TF - CF}{Y}$$

Where: TF = Total required financial assurance for the owner or operator.

CF = Current amount in the fund.

Y = Number of years remaining in the pay-in-period.

(D) The local government owner or operator shall meet one (1) of the following requirements:

(i) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), that meets the following requirements:

(AA) The bonding authority is for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund.

(BB) The bonding authority must be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

(ii) The local government owner or operator has a letter signed by the appropriate state attorney general that states the following:

(AA) The use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws.

(BB) Prior voter approval is not necessary before use of the bonding authority.

(b) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the:

- (1) local government owner or operator and local government guarantor;
- (2) local government owner or operator; or
- (3) local government guarantor;

shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of local government owner or operator or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility the name and address of the facility where tanks are assured by the local government fund.]

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[Insert “The local government fund is funded for the full amount of coverage required under 329 IAC 9-8-4, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage” or “The local government fund is funded for ten (10) times the full amount of coverage required under 329 IAC 9-8-4, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage” or “A payment is made to the fund once every year for seven (7) years until the fund is fully funded and [insert name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven (7) years until the fund is fully funded and I have attached a letter signed by the state attorney general stating that:

1. the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws; and
2. prior voter approval is not necessary before use of the bonding authority”.]

The details of the local government fund are as follows:

Amount in fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in 329 IAC 9-8-17(a)(3), insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in-period: ____.]

A copy of the state constitutional provision, or local government statute, charter, ordinance, or order dedicating the fund is attached. I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-17(b) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(Solid Waste Management Board; 329 IAC 9-8-17; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3755; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-18 Substitution of financial assurance mechanisms by owner or operator

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 18. (a) An owner or operator may substitute any alternate financial assurance mechanism under this rule, provided that at all times the owner maintains an effective financial assurance mechanism or combination of mechanisms that satisfies section 4 of this rule.

(b) After obtaining alternate financial assurance under this rule, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. *(Solid Waste Management Board; 329 IAC 9-8-18; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3756; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-8-19 Cancellation or nonrenewal by a provider of financial assurance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 19. (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. The following requirements must be completed:

- (1) Termination of a:
 - (A) local government guarantee;
 - (B) guarantee;
 - (C) surety bond; or
 - (D) letter of credit;

must not occur until one hundred twenty (120) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt.

(2) Termination of:

- (A) insurance, except for nonpayment or misrepresentation by the insured;
- (B) risk retention coverage, except for nonpayment or misrepresentation by the insured; or
- (C) the excess liability trust fund under section 11 of this rule;

must not occur until sixty (60) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured must not occur until a minimum of ten (10) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 24 of this rule, the owner or operator shall obtain alternate coverage as specified in this section within sixty (60) days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty (60) days after receipt of the notice of termination, the owner or operator shall notify the commissioner of such failure and submit the following:

- (1) The name and address of the provider of financial assurance.
- (2) The effective date of termination.
- (3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with section 21(b) of this rule.

(Solid Waste Management Board; 329 IAC 9-8-19; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3757; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-20 Reporting by owner or operator

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 20. (a) An owner or operator shall submit the appropriate forms listed in section 21(b) of this rule documenting current evidence of financial responsibility to the commissioner when any of the following occur:

- (1) Within thirty (30) days after the owner or operator identifies a release from an underground storage tank required to be reported under 329 IAC 9-4-4 or 329 IAC 9-5-2.
- (2) If the owner or operator fails to obtain alternate coverage as required by this rule, within thirty (30) days after the owner or operator receives notice of any of the following:
 - (A) Commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a provider of financial assurance as a debtor.
 - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism.
 - (C) Failure of a guarantor to meet the requirements of the financial test.
 - (D) Other incapacity of a provider of financial assurance.

(3) As required by sections 6(g) and 19(b) of this rule.

(b) An owner or operator shall certify compliance with the financial responsibility requirements of this article as specified in the new tank notification form when notifying the Indiana department of environmental management, underground storage tank branch of the installation of a new underground storage tank under 329 IAC 9-2-2.

(c) The commissioner may require an owner or operator to submit:

- (1) evidence of financial assurance as described in section 21(b) of this rule; or
- (2) other information relevant to compliance with this rule;

at any time. *(Solid Waste Management Board; 329 IAC 9-8-20; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3757; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-8-21 Record keeping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 21. (a) An owner or operator shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this rule for an underground storage tank until released from the requirements of this rule under section 23 of

this rule. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained off site must be made available upon request of the Indiana department of environmental management, underground storage tank branch.

(b) An owner or operator shall maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in:

- (A) sections 6 through 10 of this rule;
- (B) section 11(c) of this rule;
- (C) section 12 of this rule; or
- (D) sections 14 through 17 of this rule;

shall maintain a copy of the instrument worded as specified.

(2) An owner or operator using a:

(A) financial test or guarantee; or

(B) local government financial test or local government guarantee supported by the local government financial test; shall maintain a copy of the chief financial officer's letter based on year end financial statements for the most recent, completed financial reporting year. Such evidence must be on file no later than one hundred twenty (120) days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, letter of credit, or certificate of deposit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under section 16(d) of this rule shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee, where the guarantor's demonstration of financial responsibility relies on the local government bond rating test, shall maintain a copy of the guarantor's bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by the excess liability trust fund under section 11 of this rule shall maintain on file a copy of any evidence of coverage supplied by or required by Indiana under 40 CFR 280.101(d). If a certificate of deposit is used under section 11(c)(2) of this rule, the following must be maintained on file:

- (A) The updated copy of the certification and agreement.
- (B) Designation of the current location of the certificate of deposit.

(9) An owner or operator using a local government fund shall maintain the following documents:

(A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund.

(B) Year end financial statements for the most recent, completed financial reporting year showing the amount in the fund. If the fund is established under section 17(a)(3) of this rule using incremental funding backed by bonding authority, the financial statements must show the following:

- (i) The previous year's balance.
- (ii) The amount of funding during the year.
- (iii) The closing balance in the fund.

(C) If the fund is established under section 17(a)(3) of this rule using incremental funding backed by bonding authority, the owner or operator also shall maintain documentation of the required bonding authority, including either:

- (i) the results of a voter referendum as specified under section 17(a)(3)(A) of this rule; or
- (ii) attestation by the state attorney general as specified under section 17(a)(3)(B) of this rule.

(10) A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year end financial statements for the most recent, completed financial reporting year showing the amount of the fund.

(c) An owner or operator that uses an assurance mechanism specified in sections 6 through 17 of this rule shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

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Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of 329 IAC 9-8.

The financial assurance mechanism(s) used to demonstrate financial responsibility under 329 IAC 9-8 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage, and whether the mechanism covers “taking corrective action” or “compensating third parties for bodily injury and property damage caused by” or “taking corrective action and compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”.]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

(d) The owner or operator shall update the certification of financial responsibility whenever the financial assurance mechanism used to demonstrate financial responsibility changes. (*Solid Waste Management Board; 329 IAC 9-8-21; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3757; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-22 Drawing on financial assurance mechanisms

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 22. (a) Except as specified in subsection (d), the commissioner shall require the guarantor, surety, institution that issues a letter of credit, or owner or operator that obtains a certificate of deposit to place the amount of funds stipulated by the commissioner, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if either of the following occur:

(1) The conditions of clauses (A) and (B) are completed as follows:

(A) The owner or operator fails to establish alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism.

(B) Either of the following occur:

(i) The commissioner determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator.

(ii) The owner or operator has notified the commissioner under 329 IAC 9-4 or 329 IAC 9-5 of a release from an underground storage tank covered by the mechanism.

(2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The commissioner may draw on a standby trust fund when either of the following occur:

(1) The commissioner makes a final determination that a release has occurred and immediate or long term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply under 329 IAC 9-4 and 329 IAC 9-5, has not conducted corrective action as required under 329 IAC 9-5.

(2) The commissioner has received either of the following:

(A) Certification from the:

(i) owner or operator;

(ii) third party liability claimant;

(iii) attorney representing the owner or operator; and

(iv) attorney representing the third party liability claimant;

that a third party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner’s or operator’s] underground storage tank should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

(B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this rule the commissioner determines that the owner or operator has not satisfied the judgment.

(c) If the commissioner determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment must be corrective action costs necessary to protect human health and the environment. The commissioner shall direct payment of third party liability claims in the order in which the commissioner receives:

(1) certifications under subsection (b)(2)(A); and

(2) valid court orders under subsection (b)(2)(B).

(d) A governmental entity that acts as guarantor under section 16(e) of this rule, the local government guarantee without standby trust, shall make payments as directed by the commissioner under the circumstances described in this section. (*Solid Waste Management Board; 329 IAC 9-8-22; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3759; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-23 Release from the requirements

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 23. An owner or operator is no longer required to maintain financial responsibility under this rule for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 329 IAC 9-6. (*Solid Waste Management Board; 329 IAC 9-8-23; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3760; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-24 Bankruptcy or other incapacity of owner or operator or provider of financial assurance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 24. (a) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming an owner or operator as debtor, the owner or operator shall:

(1) notify the commissioner by certified mail of such commencement; and

(2) submit the appropriate forms listed in section 21(b) of this rule documenting current financial responsibility.

(b) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 7 or 11(c)(7) of this rule.

(c) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a local government owner or operator as debtor, the local government owner or operator shall:

(1) notify the commissioner by certified mail of such commencement; and

(2) submit the appropriate forms listed in section 21(b) of this rule documenting current financial responsibility.

(d) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a guarantor providing a local government financial assurance as debtor, such guarantor shall

notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 16 of this rule.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance shall be deemed to be without the required financial assurance in the event of a:

- (1) bankruptcy or incapacity of its provider of financial assurance; or
- (2) suspension or revocation of the authority of the provider of financial assurance to issue a:
 - (A) guarantee;
 - (B) insurance policy;
 - (C) risk retention group coverage policy;
 - (D) surety bond;
 - (E) letter of credit; or
 - (F) certificate of deposit.

The owner or operator shall obtain alternate financial assurance as specified in this rule within thirty (30) days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty (30) days after such notification, the owner shall notify the commissioner.

(f) Within thirty (30) days after receipt of notification that the excess liability trust fund under section 11 of this rule has become incapable of paying for assured corrective action or third party compensation costs, the owner or operator shall obtain alternate financial assurance. (*Solid Waste Management Board; 329 IAC 9-8-24; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3760; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-25 Replenishment of guarantees, letters of credit, surety bonds, or certificates of deposit

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 25. (a) If at any time after a standby trust is funded, upon the instruction of the commissioner, with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, surety bond, or certificate of deposit, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall, by the anniversary date of the financial mechanism from which the funds were drawn or within one hundred twenty (120) days after the reduction has occurred, whichever is sooner:

- (1) replenish the value of financial assurance to equal the full amount of coverage required; or
- (2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) As used in this section, "full amount of coverage required" means the amount of coverage to be provided by section 4 of this rule. If a combination of mechanisms is used to provide the assurance funds that are drawn upon, replenishment must occur by the earliest anniversary date among the mechanisms or within one hundred twenty (120) days after the reduction has occurred, whichever is sooner. (*Solid Waste Management Board; 329 IAC 9-8-25; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3760; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

ARTICLE 10. SOLID WASTE LAND DISPOSAL FACILITIES

Rule 1. General Provisions

329 IAC 10-1-1 Purpose

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-30-2-1; IC 36-9-30-35

Sec. 1. The purpose of this article is to implement the provisions of:

- (1) IC 13-30-2-1(3) and IC 13-30-2-1(4) relating to the deposit of contaminants or solid waste upon the land except as permitted in this article; and
- (2) IC 13-30-2-1(5) and IC 36-9-30-35 prohibiting dumping, causing, or allowing the open dumping of garbage or of other solid waste in violation of this article.

(*Solid Waste Management Board; 329 IAC 10-1-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1762; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2744; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-1-2 Enforcement

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-15; IC 13-18; IC 13-20; IC 13-24; IC 13-30; IC 36-9-30

Sec. 2. This article will be enforced through IC 13-14, IC 13-15, IC 13-20, IC 13-24, or IC 13-30, or any combination thereof, as appropriate. (*Solid Waste Management Board; 329 IAC 10-1-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1762; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2744; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-1-3 Penalties

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-18; IC 13-30; IC 36-9-30

Sec. 3. Penalties for violation of this article shall be governed by IC 13-14 and IC 13-30. (*Solid Waste Management Board; 329 IAC 10-1-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2745; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-1-4 Records

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Any owner, operator, or permittee required to monitor under this article or by any permit issued under this article, shall maintain all records of all monitoring information and monitoring activities, including:

- (1) the date, exact place, and time of the sampling measurements;
- (2) the sampling methods used;
- (3) the person or persons who performed the sampling or measurements;
- (4) the date or dates analyses were performed;
- (5) the person or persons who performed the analyses;
- (6) the analytical techniques or methods used;
- (7) the results of such measurements or analyses; and
- (8) all quality assurance/quality control documentation.

(b) The owner, operator, or permittee of a solid waste land disposal facility shall record and retain at the facility in an operating record, or, in an alternative location approved by the commissioner, any records required by this article.

(c) All records of monitoring activities required by this article and results thereof shall be retained by the owner, operator, or permittee of a solid waste land disposal facility for three (3) years, unless otherwise specified in this article. The three (3) year period shall be extended:

- (1) automatically during the course of any unresolved litigation between the commissioner and a permittee of a solid waste land disposal facility; or
- (2) as required by the permit conditions.

(*Solid Waste Management Board; 329 IAC 10-1-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3762; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-1-5 Variances

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14-8; IC 13-18; IC 36-9-30

Sec. 5. (a) The commissioner may grant a variance from compliance with this article in accordance with IC 13-14-8.

(b) No term, condition, or requirement granted under this section may be less stringent than requirements of 40 CFR 257 and 40 CFR 258 (October 9, 1991) and the amendments to the financial assurance criteria for owners and operators of municipal solid waste landfill facilities (60 FR 40104, August 7, 1995). (*Solid Waste Management Board; 329 IAC 10-1-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2745; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-1-6 Severability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6. If any provision of this article, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of this article that can be given effect without the invalid provision or application. (*Solid Waste Management Board; 329 IAC 10-1-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 2. Definitions

329 IAC 10-2-1 Definitions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2; IC 13-18; IC 25-31; IC 36-9-30

Sec. 1. (a) In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article to municipal solid waste landfills.

(b) In addition to the definitions in IC 13-11-2, the definitions in this rule apply to the regulation of nonmunicipal solid waste landfills, construction/demolition sites, and restricted waste sites Types I, II, III, and IV as follows:

- (1) 329 IAC 10-3-3.
- (2) 329 IAC 10-4.
- (3) 329 IAC 10-7.1 and 329 IAC 10-8.1.
- (4) 329 IAC 10-9-3 and 329 IAC 10-9-5.
- (5) 329 IAC 10-10 through 329 IAC 10-23.
- (6) 329 IAC 10-39-10 and 329 IAC 10-39-11.

(*Solid Waste Management Board; 329 IAC 10-2-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1702, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2745, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990*)

329 IAC 10-2-2 “Access road” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 2. “Access road” means a road that leads to the entrance of a solid waste processing or disposal facility, normally a county, state, or federal highway. (*Solid Waste Management Board; 329 IAC 10-2-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763*)

329 IAC 10-2-3 “Active life” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 3. “Active life” means the period of operation of a solid waste land disposal facility beginning with the initial receipt of solid waste and ending with proper completion of closure activities in accordance with 329 IAC 10-22, 329 IAC 10-30, 329 IAC 10-37, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996. (*Solid Waste Management Board; 329 IAC 10-2-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1763; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3762*)

329 IAC 10-2-4 “Active portion” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 4. “Active portion” means the part of the solid waste land disposal facility that has received or is receiving wastes and

that has not been closed in accordance with 329 IAC 10-22, 329 IAC 10-30, 329 IAC 10-37, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996. (*Solid Waste Management Board; 329 IAC 10-2-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3762*)

329 IAC 10-2-5 “Adjoining land” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 5. “Adjoining land” means the land that abuts or touches land upon which a solid waste land disposal facility is located. If the immediately adjoining land is owned by the permittee or the solid waste land disposal facility, the adjoining land is the first abutting land not owned by the permittee unless the first abutting land is greater than one-half (½) mile from the solid waste boundary. If there is a road or other right-of-way adjoining the property, then the land adjoining the road or other right-of-way is also adjoining. (*Solid Waste Management Board; 329 IAC 10-2-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3763*)

329 IAC 10-2-6 “Air pollution” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 6. “Air pollution” means the presence in, or the threatened discharge into, the atmosphere of one (1) or more contaminants in sufficient quantities and of such characteristics and duration as:

- (1) to be injurious or to threaten to be injurious to human health, plant or animal life, or property; or
- (2) to interfere unreasonably with the enjoyment of life or property.

(*Solid Waste Management Board; 329 IAC 10-2-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764*)

329 IAC 10-2-7 “Airport” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 7. “Airport” means:

- (1) a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities; or
- (2) an active military airport.

(*Solid Waste Management Board; 329 IAC 10-2-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764*)

329 IAC 10-2-7.3 “Alternative water supply” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 7.3. (a) “Alternative water supply” means a potable ground water source, or other source of potable water, that meets the requirements of subsection (b), that is a substitute for either:

- (1) an aquifer being considered for aquifer of significance determination; or
- (2) an aquifer that has been determined to be affected by a ground water contaminant plume.

(b) An alternative water supply must meet one (1) of the following criteria:

- (1) The alternative water supply is a potable ground water source that:
 - (A) is not hydraulically connected to the aquifer described in subsection (a);
 - (B) is at a stratigraphic depth that does not exclude conventional household methods of drinking water extraction;
 - (C) is of comparable or superior yield to the aquifer described in subsection (a); and
 - (D) is of comparable or superior quality to the aquifer described in subsection (a).
- (2) The alternative water supply is an independent public water supply system that does not draw water from the aquifer described in subsection (a), unless the ground water intake is demonstrably upgradient of the MSWLF unit.

- (c) A demonstration that an aquifer meets the criteria in subsection (b)(1) may be limited to:
- (1) information available in the local and regional hydrostudy; and
 - (2) information that can be obtained on-site.

(Solid Waste Management Board; 329 IAC 10-2-7.3; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3763)

329 IAC 10-2-8 “Anchored mulch” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 8. “Anchored mulch” means mulch that is anchored to prevent the displacement of mulch by wind and water. Anchoring is achieved by methods such as:

- (1) applying a tackifier;
- (2) crimping the mulch material with an anchoring tool or a farm disk that is dull, serrated, and set straight; or
- (3) stapling netting over the mulch.

(Solid Waste Management Board; 329 IAC 10-2-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764)

329 IAC 10-2-9 “Annular space” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 9. “Annular space” means the open space formed between the borehole or protective casing and the well casing. *(Solid Waste Management Board; 329 IAC 10-2-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764)*

329 IAC 10-2-10 “Applicant” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 10. “Applicant” means the person who applies for the permit. *(Solid Waste Management Board; 329 IAC 10-2-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764)*

329 IAC 10-2-11 “Aquiclude” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 11. “Aquiclude” means a body of relatively impermeable rock that is capable of absorbing water slowly but does not transmit rapidly enough to supply a well or spring. *(Solid Waste Management Board; 329 IAC 10-2-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764)*

329 IAC 10-2-12 “Aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 12. “Aquifer” means a consolidated or unconsolidated geologic formation or group of formations or a portion of a formation, that is hydraulically interconnected and that has the ability to receive, store, or transmit water to wells, springs, or other surface water bodies. *(Solid Waste Management Board; 329 IAC 10-2-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1764)*

329 IAC 10-2-13 “Aquifer of significance” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 13. (a) For the purpose of preparing the hydrogeologic site investigation report under 329 IAC 10-15-4 and to determine

the applicable design requirements of 329 IAC 10-16-9 and 329 IAC 10-17-2, “aquifer of significance” means an aquifer:

- (1) that has been identified as:
 - (A) a surficial aquifer;
 - (B) a buried aquifer;
 - (C) a bedrock aquifer; or
 - (D) a discontinuous aquifer; and
 - (2) that meets the criteria in either subsection (b) or (c).
- (b) An aquifer that is described in subsection (a)(1) is an aquifer of significance if it meets the following criteria:
- (1) The aquifer is below and extends beyond the solid waste boundary.
 - (2) The aquifer is capable of a yield of two hundred thousand (200,000) gallons per day as determined by the following equation:

$$K \geq 37/b^2$$

Where: K = Hydraulic Conductivity (cm/sec).

b = Saturated Thickness (ft).

The location of the determination is based on obtaining a maximum discharge from the aquifer.

The determination must consider the entire vertical extent of the aquifer to obtain a full “average” K value of all distinctive layers of a nonhomogeneous aquifer if distinctive layers are hydraulically connected.

(c) An aquifer that is described in subsection (a)(1) is an aquifer of significance if the following criteria are met:

- (1) The aquifer is below and extends beyond the solid waste boundary.
- (2) The aquifer is a potable ground water source described in clauses (A) and (B) or is capable of supplying drinking water for properties that are:
 - (A) within a one (1) mile radius of the solid waste boundary; and
 - (B) not demonstrably upgradient of the MSWLF unit.
- (3) There is no alternative water supply that is available to properties for connection at the time the construction of the MSWLF unit begins.

(Solid Waste Management Board; 329 IAC 10-2-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1765; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2745; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3763)

329 IAC 10-2-14 “Aquitard” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 14. “Aquitard” means a confining bed that retards but does not prevent the flow of water to or from an adjacent aquifer. It does not readily yield water to wells or springs, but may serve as a storage unit for ground water. *(Solid Waste Management Board; 329 IAC 10-2-14; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1765)*

329 IAC 10-2-15 “Areas susceptible to mass movement” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 15. “Areas susceptible to mass movement” means those areas of influence that are characterized as having an active or substantial possibility of mass movement where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement may include the following:

- (1) Landslides.
- (2) Avalanches.
- (3) Debris slides and flows.
- (4) Solifluction.
- (5) Block sliding.
- (6) Underground mine collapse.

(7) Rock fall.

(Solid Waste Management Board; 329 IAC 10-2-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1765; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2745)

329 IAC 10-2-16 “Ash residue” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 16. “Ash residue” means all solid residue and any entrained liquids resulting from the combustion of solid waste, fossil fuel, or solid waste in combination with fossil fuel at a solid waste incinerator, including:

(1) bottom ash;

(2) boiler ash;

(3) fly ash; or

(4) solid residue of any air pollution control device used at a solid waste incinerator.

(Solid Waste Management Board; 329 IAC 10-2-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1765)

329 IAC 10-2-17 “Assessment ground water monitoring well” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 17. “Assessment ground water monitoring well” means any ground water monitoring well placed within or beyond the monitoring boundary at the solid waste land disposal facility that is used to obtain ground water for the assessment ground water monitoring program or the corrective action ground water monitoring program. *(Solid Waste Management Board; 329 IAC 10-2-17; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1765; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3764)*

329 IAC 10-2-18 “Background ground water data” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 18. “Background ground water data” means all data collected from the background ground water monitoring well or wells during any period when background ground water quality is being established at a facility or the historical ground water data of a particular ground water monitoring well. *(Solid Waste Management Board; 329 IAC 10-2-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1765)*

329 IAC 10-2-19 “Background ground water mean” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 19. “Background ground water mean” means the arithmetic mean of a constituent's concentrations collected from the background ground water monitoring well or wells of a defined hydrogeologic flow regime that is intended to monitor and characterize the background water quality or the pooled average of the historical ground water data of a particular ground water monitoring well per constituent. *(Solid Waste Management Board; 329 IAC 10-2-19; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766)*

329 IAC 10-2-19.1 “Background ground water monitoring” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 19.1. “Background ground water monitoring” means a ground water monitoring well or system of wells where ground water samples are collected for the purpose of establishing a background ground water data base. The background ground water monitoring well or system of wells must be unaffected by the MSWLF unit and may be considered to be an upgradient ground water monitoring well. *(Solid Waste Management Board; 329 IAC 10-2-19.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766; filed Aug 2,*

1999, 11:50 a.m.: 22 IR 3764)

329 IAC 10-2-20 “Background ground water quality” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 20. “Background ground water quality” means ground water chemistry that is not attributed to a facility. (*Solid Waste Management Board; 329 IAC 10-2-20; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766*)

329 IAC 10-2-21 “Barrier” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 21. “Barrier” means a layer of nonaquifer material between a liner and an aquifer. (*Solid Waste Management Board; 329 IAC 10-2-21; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766*)

329 IAC 10-2-22 “Base flood” or “one hundred year flood” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 22. “Base flood” or “one hundred year flood” means a flood that has a one percent (1%) or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded, on the average, once in one hundred (100) years. (*Solid Waste Management Board; 329 IAC 10-2-22; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766*)

329 IAC 10-2-23 “Bedrock” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 23. “Bedrock” means cemented or consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials. (*Solid Waste Management Board; 329 IAC 10-2-23; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766*)

329 IAC 10-2-23.1 “Bedrock aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 23.1. “Bedrock aquifer” means an aquifer consisting of bedrock that may include sand and gravel hydraulically interconnected with the bedrock. (*Solid Waste Management Board; 329 IAC 10-2-23.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3764*)

329 IAC 10-2-24 “Bird hazard” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 24. “Bird hazard” means that which increases the likelihood of collisions between birds and aircraft that may cause damage to the aircraft or injury to its occupants. (*Solid Waste Management Board; 329 IAC 10-2-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766*)

329 IAC 10-2-25 “Board” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 25. “Board” means the solid waste management board. (*Solid Waste Management Board; 329 IAC 10-2-25; filed Mar*

14, 1996, 5:00 p.m.: 19 IR 1766; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813)

329 IAC 10-2-26 “Borehole” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 26. “Borehole” means a hole drilled in the earth to identify consolidated materials, unconsolidated materials, and water table levels. (*Solid Waste Management Board; 329 IAC 10-2-26; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766*)

329 IAC 10-2-27 “Buried aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 27. “Buried aquifer” means an aquifer consisting of sand and gravel that includes bedrock hydraulically interconnected with the sand and gravel that is covered by ten (10) feet or more of nonaquifer material and in which sand and gravel deposits are continuous in at least one direction beyond the facility boundary. (*Solid Waste Management Board; 329 IAC 10-2-27; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1766; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3764*)

329 IAC 10-2-28 “Certificate of insurance” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 28. “Certificate of insurance” means a contractual agreement under which an insurer agrees to compensate an insured person for losses. By purchasing insurance, the insured person transfers financial risk to the insurer. (*Solid Waste Management Board; 329 IAC 10-2-28; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767*)

329 IAC 10-2-29 “Certified professional geologist” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 29. “Certified professional geologist” means a professional geologist certified by the state of Indiana under IC 25-17.6. (*Solid Waste Management Board; 329 IAC 10-2-29; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813*)

329 IAC 10-2-30 “Closure” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 30. “Closure” means those activities to be completed at the end of waste acceptance at a solid waste land disposal facility or units of a facility, including certification required by 329 IAC 10-22-8, 329 IAC 10-30-7, or 329 IAC 10-37-7, but not including those activities required after certification. (*Solid Waste Management Board; 329 IAC 10-2-30; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3764*)

329 IAC 10-2-31 “Collection container system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 31. “Collection container system” means a group of containers for solid waste collection from noncommercial, nonindustrial, and noninstitutional sources, and made available for use by the general public, such as a county wide collection box system. (*Solid Waste Management Board; 329 IAC 10-2-31; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767*)

329 IAC 10-2-32 “Commercial solid waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 32. “Commercial solid waste” means all types of solid waste generated by retail outlets, offices, restaurants, warehouses, and other nonmanufacturing activities, but excludes residential, hazardous, infectious, and special wastes. (*Solid Waste Management Board; 329 IAC 10-2-32; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767*)

329 IAC 10-2-33 “Commissioner” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 33. “Commissioner” refers to the commissioner of the department created under IC 13-13-1-1. (*Solid Waste Management Board; 329 IAC 10-2-33; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813*)

329 IAC 10-2-34 “Composite liner” or “composite bottom liner system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 34. “Composite liner” or “composite bottom liner system” means a system consisting of at least two (2) components:
(1) the upper component is a geomembrane liner; and
(2) the lower component is a layer of compacted soil.
(*Solid Waste Management Board; 329 IAC 10-2-34; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767*)

329 IAC 10-2-35 “Confined aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 35. “Confined aquifer” means an aquifer bounded above and below by impermeable beds, or by beds of distinctly lower permeability than that of the aquifer itself. It is an aquifer containing confined ground water. (*Solid Waste Management Board; 329 IAC 10-2-35; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767*)

329 IAC 10-2-36 “Construction/demolition site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 36. “Construction/demolition site” means a permitted solid waste land disposal facility designed and operated to accept construction/demolition waste. (*Solid Waste Management Board; 329 IAC 10-2-36; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767*)

329 IAC 10-2-37 “Construction/demolition waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 37. (a) “Construction/demolition waste” means solid waste resulting from the construction, remodeling, repair, or demolition of structures. Such wastes may include any of the following:

- (1) Scrap lumber.
- (2) Bricks.
- (3) Concrete.
- (4) Stone.
- (5) Glass.
- (6) Wallboard.

- (7) Roofing.
- (8) Plumbing fixtures.
- (9) Wiring.
- (10) Nonasbestos insulation.

(b) The term does not include the following types of regulated solid waste:

- (1) Fluorescent light fixtures.
- (2) Appliances.
- (3) Regulated asbestos-containing material as defined in 40 CFR 61.
- (4) Any other waste resulting from construction, remodeling, repair, or demolition of a structure that, when placed in the landfill, would potentially result in contamination of ground water or present a risk to human health or the environment.

(Solid Waste Management Board; 329 IAC 10-2-37; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767)

329 IAC 10-2-37.1 “Construction plan” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 37.1. “Construction plan” means:

- (1) the detailed plans, design specifications, and any other information relative to the construction of a solid waste land disposal facility that are submitted with the permit application; and
- (2) any permit conditions specified in the permit.

A construction plan is considered approved by the commissioner when the permit is issued. *(Solid Waste Management Board; 329 IAC 10-2-37.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1768; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3764)*

329 IAC 10-2-38 “Construction quality assurance” or “CQA” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 38. “Construction quality assurance” or “CQA” means a planned system of activities that provides assurance that the solid waste land disposal facility was constructed as specified in the approved construction plan. Construction quality assurance includes inspections, verifications, audits, and evaluations of material and workmanship necessary to determine and document the quality of the constructed facility. Construction quality assurance refers to measures taken by a project engineer to assess if the installer or contractor is in compliance with the approved construction plan. *(Solid Waste Management Board; 329 IAC 10-2-38; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1768; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765)*

329 IAC 10-2-39 “Construction quality control” or “CQC” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 39. “Construction quality control” or “CQC” means a planned system of inspections that is used to directly monitor and control the quality of a construction project. Construction quality control is normally performed by the geosynthetics manufacturer or installer, or for natural soil materials by the earthwork contractor, and is necessary to achieve quality in the constructed or installed system. Construction quality control refers to measures taken by the installer or contractor to determine compliance with the requirements for materials and workmanship as stated in the approved construction plan. *(Solid Waste Management Board; 329 IAC 10-2-39; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1768)*

329 IAC 10-2-40 “Container” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 40. “Container” means a portable receptacle in which solid waste or recyclables are held for collection, storage, or transportation. *(Solid Waste Management Board; 329 IAC 10-2-40; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1768)*

329 IAC 10-2-41 “Contaminant” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 41. “Contaminant” means any of the following:

- (1) Pollutant as defined in the Federal Water Pollution Control Act (33 U.S.C. 1362, as amended November 18, 1988).
- (2) Radioactive material as regulated by the Atomic Energy Act of 1954 (42 U.S.C. 2014, as amended October 24, 1992).
- (3) Solid or hazardous waste as determined by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq., as effective January 1, 1989).
- (4) Hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq., as amended November 23, 1988).
- (5) Any toxic substance as determined by the Toxic Substances Control Act (15 U.S.C. 2603 et seq., as amended October 22, 1986).
- (6) Any commingled waste containing waste as defined in subdivisions (1) through (5), from whatever source that:
 - (A) is injurious to human health, plant or animal life, or property;
 - (B) interferes unreasonably with the enjoyment of life or property; or
 - (C) is otherwise violative of this article.

(Solid Waste Management Board; 329 IAC 10-2-41; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1768)

329 IAC 10-2-41.1 “Conterminous” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 41.1. “Conterminous” means contained within the same boundaries. *(Solid Waste Management Board; 329 IAC 10-2-41.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)*

329 IAC 10-2-42 “Contiguous land” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 42. “Contiguous land” means land touching along a boundary or at a point. *(Solid Waste Management Board; 329 IAC 10-2-42; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)*

329 IAC 10-2-43 “Contingency action plan” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 43. “Contingency action plan” means a document setting out an organized, planned, and coordinated course of action to be followed in case of an emergency such as a fire, explosion, release of solid waste byproducts, such as gases or chemical contaminants, or leachate that could threaten human health or the environment. *(Solid Waste Management Board; 329 IAC 10-2-43; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)*

329 IAC 10-2-44 “Continuously flowing river” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 44. “Continuously flowing river” means a body of water that has measurable velocity of flow for at least nine (9) months of the year and is labelled on a United States Geological Survey (USGS) seven and one-half (7.5) minute series topographical map as a river. *(Solid Waste Management Board; 329 IAC 10-2-44; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)*

329 IAC 10-2-45 “Continuously flowing stream” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 45. “Continuously flowing stream” means a body of water that has measurable velocity of flow for at least nine (9) months of the year or is designated as a perennial flowing stream on a United States Geological Survey (USGS) seven and one-half (7.5) minute series topographical map, but is not labelled as a river. *(Solid Waste Management Board; 329 IAC 10-2-45; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)*

329 IAC 10-2-46 “Corrective action” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 46. “Corrective action” means the steps taken to complete the following:

- (1) Repair solid waste land disposal facility structures including any of the following:
 - (A) Liners.
 - (B) Monitoring wells.
 - (C) Methane gas systems.
 - (D) Separation equipment.
 - (E) Covers.
 - (F) Aeration devices.

- (2) Bring the solid waste land disposal facility into compliance with design, construction, operation, ground water, surface water, and air emission standards.

(Solid Waste Management Board; 329 IAC 10-2-46; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765)

329 IAC 10-2-47 “Corrective action remedy” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 47. “Corrective action remedy” means the appropriate action or actions taken to correct or address the items identified in section 46 of this rule. *(Solid Waste Management Board; 329 IAC 10-2-47; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746)*

329 IAC 10-2-48 “Cover” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 48. “Cover” means any soil or other suitable material approved by the commissioner placed over the solid waste in accordance with:

- (1) 329 IAC 10-20 and 329 IAC 10-22;
- (2) 329 IAC 10-28 and 329 IAC 10-30; or
- (3) 329 IAC 10-36 and 329 IAC 10-37.

(Solid Waste Management Board; 329 IAC 10-2-48; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)

329 IAC 10-2-49 “Cover storage site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 49. “Cover storage site” means any area where cover material is stockpiled for future use on the solid waste land disposal facility. *(Solid Waste Management Board; 329 IAC 10-2-49; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1769)*

329 IAC 10-2-50 “Current closure cost estimate” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 50. “Current closure cost estimate” means the original closure cost estimate or the most recent revision thereof made in accordance with 329 IAC 10-39. *(Solid Waste Management Board; 329 IAC 10-2-50; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-51 “Current post-closure cost estimate” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 51. “Current post-closure cost estimate” means the original post-closure cost estimate or the most recent revision thereof made in accordance with 329 IAC 10-39. *(Solid Waste Management Board; 329 IAC 10-2-51; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-52 “Daily cover” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 52. “Daily cover” means that cover applied to the working face of the solid waste land disposal facility on a daily basis. *(Solid Waste Management Board; 329 IAC 10-2-52; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-53 “Department” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 53. “Department” means the department of environmental management created under IC 13-13-1. *(Solid Waste Management Board; 329 IAC 10-2-53; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813)*

329 IAC 10-2-54 “Design capacity” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 54. “Design capacity” means the total volume of compacted solid waste, topsoil or vegetated layer, and all cover material specified in the solid waste land disposal facility permit as calculated from final contour and cross-sectional plan sheets that define the lateral and vertical extent of the solid waste boundary. *(Solid Waste Management Board; 329 IAC 10-2-54; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765)*

329 IAC 10-2-55 “Dike” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 55. “Dike” means an embankment or ridge of either natural or manmade materials used to prevent, control, or confine the movement of liquids or solids. *(Solid Waste Management Board; 329 IAC 10-2-55; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-56 “Discard” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 56. “Discard” means to abandon by:
(1) disposal;

- (2) burning or incinerating, including being burned as a fuel for the purpose of recovering usable energy; or
- (3) accumulating, storing, or physically or chemically treating, other than burning or incinerating, in lieu of or prior to disposal.

(Solid Waste Management Board; 329 IAC 10-2-56; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)

329 IAC 10-2-57 “Discontinuous aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 57. “Discontinuous aquifer” means an aquifer consisting of thin lenses of buried sand and gravel, which includes bedrock hydraulically interconnected with the sand and gravel that is not laterally extensive such as morainal areas. *(Solid Waste Management Board; 329 IAC 10-2-57; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-58 “Disease vectors” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 58. “Disease vectors” means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting microorganisms and disease to humans and other animals. *(Solid Waste Management Board; 329 IAC 10-2-58; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-59 “Displacement” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 59. “Displacement” means the relative movement of any two (2) sides of a fault measured in any direction. *(Solid Waste Management Board; 329 IAC 10-2-59; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1770)*

329 IAC 10-2-60 “Disposal” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 60. “Disposal” means the discharge, deposit, dumping, emission, injection, spilling, leaking, or placement of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or any constituent of the waste is in or may enter the environment or be emitted into the air or discharged into any waters, including ground waters. *(Solid Waste Management Board; 329 IAC 10-2-60; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771)*

329 IAC 10-2-61 “Disposal capacity” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 61. “Disposal capacity” means the maximum volume of solid waste, including all cover material, to be received at the solid waste land disposal facility during its active life as approved by the department. *(Solid Waste Management Board; 329 IAC 10-2-61; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771)*

329 IAC 10-2-62 “Downgradient ground water monitoring well” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 62. “Downgradient ground water monitoring well” means an approved ground water monitoring well that is used to obtain ground water samples at a solid waste land disposal facility and is located at or beyond the monitoring boundary. *(Solid Waste*

Management Board; 329 IAC 10-2-62; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765)

329 IAC 10-2-62.1 “Drinking water supply reservoir” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 62.1. “Drinking water supply reservoir” means an artificial or natural storage place for water, such as a lake, pond, or basin, from which water is being withdrawn or has the potential of being withdrawn for the purpose of human consumption and use. For the purposes of the setback requirement in 329 IAC 10-16-11(a)(9), a drinking water supply reservoir is being used as a drinking water supply for humans if one (1) or more service connections exist at the time of zoning of the solid waste disposal facility. *(Solid Waste Management Board; 329 IAC 10-2-62.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771)*

329 IAC 10-2-63 “Dwelling” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 63. “Dwelling” means any building that people inhabit on a regular or seasonal basis, including, but not limited to, the following:

- (1) Home-based schools.
- (2) Residences.
- (3) Public or private hospitals with twenty (20) beds or less.
- (4) Churches.

The term does not include offices, factories, public or non-public schools, or public or private hospitals with more than twenty (20) beds. *(Solid Waste Management Board; 329 IAC 10-2-63; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771)*

329 IAC 10-2-64 “Endangered species” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 64. “Endangered species” has the meaning set forth in 312 IAC 9-3-19, 312 IAC 9-4-14, 312 IAC 9-5-4, and 312 IAC 9-6-9. *(Solid Waste Management Board; 329 IAC 10-2-64; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813)*

329 IAC 10-2-65 “Environmental protection acts” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 65. “Environmental protection acts” means state and federal statutes relating to protection of the environment and public health. *(Solid Waste Management Board; 329 IAC 10-2-65; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771)*

329 IAC 10-2-66 “Equivalent hydraulic conductivity” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 66. “Equivalent hydraulic conductivity” means the hydraulic conductivity averaged in such a manner as to represent the overall ability of a material to transmit flow. *(Solid Waste Management Board; 329 IAC 10-2-66; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771)*

329 IAC 10-2-67 “Existing municipal solid waste landfill unit” or “existing MSWLF unit” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 67. "Existing municipal solid waste landfill unit" or "existing MSWLF unit" means any MSWLF unit that has received solid waste and has not been certified as closed under 329 IAC 10-22. (*Solid Waste Management Board; 329 IAC 10-2-67; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1771*)

329 IAC 10-2-68 "Face amount" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 68. "Face amount" means the total amount the insurer is obligated to pay under the insurance policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments. (*Solid Waste Management Board; 329 IAC 10-2-68; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-69 "Facility" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 69. "Facility" may consist of one (1) or more permitted processing, storage, disposal, or operational units used for processing, storing in conjunction with processing or disposal, or disposing of solid waste. The term includes:

- (1) all conterminous land and structures related to the permit;
- (2) other appurtenances related to the permit; and
- (3) improvements on the land related to the permit.

(*Solid Waste Management Board; 329 IAC 10-2-69; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-70 "Facility boundary" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 70. "Facility boundary" means the outermost perimeter of land related to the facility as defined in section 69 of this rule. (*Solid Waste Management Board; 329 IAC 10-2-70; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746*)

329 IAC 10-2-71 "Factories" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 71. "Factories" means a building or set of buildings with facilities for manufacturing. (*Solid Waste Management Board; 329 IAC 10-2-71; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-72 "Fault" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 72. "Fault" means a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side. (*Solid Waste Management Board; 329 IAC 10-2-72; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-72.1 "Final closure" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 72.1. "Final closure" means those activities required at the end of waste acceptance for the entire area of a facility, including the placement of final cover and the establishment of vegetation in accordance with approved closure plans but exclusive

of monitoring and maintenance activities required under post-closure care. (*Solid Waste Management Board; 329 IAC 10-2-72.1; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746*)

329 IAC 10-2-72.2 “Final closure certification” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 72.2. “Final closure certification” means a written certification signed by the owner, operator, or permittee and an independent registered professional engineer submitted to the commissioner stating that final closure for all units of the facility have been completed in accordance with the approved closure plan. (*Solid Waste Management Board; 329 IAC 10-2-72.2; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746*)

329 IAC 10-2-73 “Final cover” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 73. “Final cover” means any cover of a type and thickness approved by the commissioner to be placed on top of the waste upon the termination of filling in an area. (*Solid Waste Management Board; 329 IAC 10-2-73; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-74 “Flood plain” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 74. “Flood plain” means the areas adjoining a river, stream, or lake that are inundated by the base flood as determined by 310 IAC 6. (*Solid Waste Management Board; 329 IAC 10-2-74; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-75 “Floodway” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 75. “Floodway” means the channel of a river or stream and those portions of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flow from the base flood as determined by 310 IAC 6. (*Solid Waste Management Board; 329 IAC 10-2-75; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-76 “Garbage” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 76. “Garbage” means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the processing, handling, preparation, cooking, serving, or consumption of food or food materials. (*Solid Waste Management Board; 329 IAC 10-2-76; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772*)

329 IAC 10-2-77 “Gas condensate” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 77. “Gas condensate” means the liquid generated as a result of the gas recovery process or processes at the solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-77; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1772; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765*)

329 IAC 10-2-78 “Generator” or “generating facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 78. “Generator” or “generating facility” means any person or location, at, on, or by which one (1) or more solid wastes are generated, such as a manufacturing plant that may generate more than one (1) source of solid waste at the plant location. The term does not include a hazardous waste generator as regulated by 329 IAC 3.1. (*Solid Waste Management Board; 329 IAC 10-2-78; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-78.1 “Generator knowledge” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 78.1. “Generator knowledge” means the relevant, accurate, and reliable information available to or developed by the generator about a waste that allows a person to determine the correct regulatory status of that waste. This information may include, but is not limited to, the following categories of information:

- (1) Information provided by the manufacturer or supplier of the materials used in the process.
- (2) Information provided in reference materials.
- (3) Information describing the process that generates the waste.
- (4) Information describing the materials used in the process that generates the waste.
- (5) Information describing principles of science, including chemistry and physics, applied to the raw materials and process used.
- (6) Information developed through prior testing of the waste.

(*Solid Waste Management Board; 329 IAC 10-2-78.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-2-79 “Geogrid” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 79. “Geogrid” means a deformed or nondeformed netlike polymeric material used with foundation, soil, rock, earth, or any other geotechnical engineering-related material as an integral part of the manmade structure or system to provide reinforcement. (*Solid Waste Management Board; 329 IAC 10-2-79; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-80 “Geomembrane” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 80. “Geomembrane” means an essentially impermeable membrane used with foundation, soil, rock, earth, or any other geotechnical engineering-related material as an integral part of a manmade structure or system designed to limit the movement of liquid or gas in the system. (*Solid Waste Management Board; 329 IAC 10-2-80; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-81 “Geonet” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 81. “Geonet” means a geosynthetic consisting of integrally connected parallel sets of ribs overlying similar sets at various angles for planar drainage of liquids and gases. (*Solid Waste Management Board; 329 IAC 10-2-81; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-82 “Geosynthetics” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 82. “Geosynthetics” means the generic classification of all synthetic materials used in geotechnical engineering applications including geotextiles, geogrids, geomembranes, geonets, and geocomposites. (*Solid Waste Management Board; 329 IAC 10-2-82; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-83 “Geotextile” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 83. “Geotextile” means any permeable textile used with foundation, soil, rock, earth, or any other geotechnical engineering-related material as an integral part of a manmade structure or system designed:

- (1) to act as a filter to prevent the flow of soil fines into drainage systems;
- (2) to provide planar flow for drainage;
- (3) to serve as a cushion to protect geomembranes; or
- (4) to provide structural support.

(*Solid Waste Management Board; 329 IAC 10-2-83; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-84 “Grading” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 84. “Grading” means the contouring of land so that surface water flow and erosion are controlled according to an approved plan. (*Solid Waste Management Board; 329 IAC 10-2-84; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-85 “Ground water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 85. “Ground water” means such accumulations of underground water, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but excluding manmade underground storage or conveyance structures. (*Solid Waste Management Board; 329 IAC 10-2-85; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-86 “Ground water monitoring well” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 86. “Ground water monitoring well” means a well that is approved by the commissioner and is constructed for the purpose of obtaining ground water samples. (*Solid Waste Management Board; 329 IAC 10-2-86; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-87 “Hauler” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 87. “Hauler” means a person engaged in the transportation of solid waste by air, rail, roadway, or water. (*Solid Waste Management Board; 329 IAC 10-2-87; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1773*)

329 IAC 10-2-88 “Hazardous waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 88. “Hazardous waste” means that waste that is regulated under 329 IAC 3.1. (*Solid Waste Management Board; 329 IAC 10-2-88; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774*)

329 IAC 10-2-88.5 “Holding time” defined

Authority: IC 13-4-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 88.5. “Holding time” means the maximum allowable elapsed time between sample collection and sample preparation and analysis. (*Solid Waste Management Board; 329 IAC 10-2-88.5; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765*)

329 IAC 10-2-89 “Holocene” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 89. “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch, eleven thousand (11,000) years ago, to the present. (*Solid Waste Management Board; 329 IAC 10-2-89; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774*)

329 IAC 10-2-90 “Household waste” or “residential waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 90. “Household waste” or “residential waste” means any solid waste, such as garbage, trash, and sanitary waste in septic tanks, derived from households, including:

- (1) single and multiple residences;
- (2) hotels;
- (3) motels;
- (4) bunkhouses;
- (5) ranger stations;
- (6) crew quarters;
- (7) campgrounds;
- (8) picnic grounds; and
- (9) day-use recreation areas.

(*Solid Waste Management Board; 329 IAC 10-2-90; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774*)

329 IAC 10-2-91 “Hydraulic gradient” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 91. “Hydraulic gradient” means the head loss per unit length where the head loss is expressed in terms of the unit length so as to produce a dimensionless value. (*Solid Waste Management Board; 329 IAC 10-2-91; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774*)

329 IAC 10-2-91.1 “Incidental disposal” defined

Authority: IC 13-14-8; IC 13-15-2; IC 13-19-3; IC 13-20-14-1
Affected: IC 13-20-14-1

Sec. 91.1. "Incidental disposal" means the disposal of a whole waste tire in a municipal solid waste landfill when:

- (1) the tire arrives at the working face of the municipal solid waste landfill in a load of municipal solid waste; and
- (2) removing the tire would endanger persons or equipment or cause delays that result in safety problems at the working face of the municipal solid waste landfill.

(Solid Waste Management Board; 329 IAC 10-2-91.1; filed Aug 25, 1997, 9:40 a.m.: 21 IR 75)

329 IAC 10-2-92 "Incinerator" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 92. "Incinerator" has the meaning set forth in 329 IAC 11-2-16. *(Solid Waste Management Board; 329 IAC 10-2-92; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774)*

329 IAC 10-2-93 "Independent ground water sample" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 93. "Independent ground water sample" means a sample or sample set of ground water collected that provides a measure of the chemical and physical properties of the ground water within the area affected by the well screen's interval after a well has been purged or stabilized sufficiently. *(Solid Waste Management Board; 329 IAC 10-2-93; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774)*

329 IAC 10-2-94 "Independent, registered professional engineer" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 94. "Independent, registered professional engineer" means a registered professional engineer who is not permanently employed by the owner, operator, or permittee of a solid waste land disposal facility. *(Solid Waste Management Board; 329 IAC 10-2-94; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774)*

329 IAC 10-2-95 "Industrial process waste" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 95. "Industrial process waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste defined by section 88 of this rule and regulated under 329 IAC 3.1. Such waste may include, but is not limited to, waste resulting from any of the following manufacturing processes:

- (1) Electric power generation.
- (2) Fertilizer or agricultural chemicals production.
- (3) Food and related products or byproducts production.
- (4) Inorganic chemicals production.
- (5) Iron and steel manufacture or foundries.
- (6) Leather and leather products production.
- (7) Nonferrous metals manufacture or foundries.
- (8) Organic chemicals production.
- (9) Plastics and resins manufacture.
- (10) Pulp and paper industry.
- (11) Rubber and miscellaneous plastic products production.
- (12) Stone, glass, clay, and concrete products.
- (13) Textile manufacture.
- (14) Transportation equipment.
- (15) Oil and gas processing and refining but not exploration and recovery.

(16) Painting, printing, and allied industries.

(17) Contaminated, off-specification, or outdated wholesale products.

(18) Waste recycling and processing activities, excluding operations in which processing consists solely of segregation of components of municipal solid waste and no chemical or physical alteration of the waste is performed.

(19) Processing of ores and minerals as defined under 40 CFR 261.4(b)(7), but not the extraction and beneficiation of ores or minerals as defined under 40 CFR 261.4(b)(7).

The term does not include mining operations waste or oil and gas recovery waste. (*Solid Waste Management Board; 329 IAC 10-2-95; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1774*)

329 IAC 10-2-96 “Infectious waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 96. “Infectious waste” has the meaning set forth in 410 IAC 1-3-10, as supported by the ancillary definitions of 410 IAC 1-3, and applies to facilities regulated under 410 IAC 1-3. (*Solid Waste Management Board; 329 IAC 10-2-96; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045*)

329 IAC 10-2-97 “Infectious waste incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 97. “Infectious waste incinerator” has the meaning set forth in 329 IAC 11-2-19. (*Solid Waste Management Board; 329 IAC 10-2-97; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775*)

329 IAC 10-2-97.1 “Insignificant facility modification” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 97.1. “Insignificant facility modification” means the following:

- (1) Relocation of a solid waste land disposal facility waste hauling road.
- (2) Relocation of office buildings.
- (3) Changes in sequences of filling in permitted areas.
- (4) Installation of temporary sediment control measures.
- (5) Installation of leachate control systems to prevent leachate migration off-site.
- (6) Installation of additional methane venting wells to an approved system.
- (7) Installation of weighing scales.
- (8) Replacement of a monitoring well no more than ten (10) feet horizontally from the original location and at an equal depth.
- (9) An alternative daily cover (ADC) under 329 IAC 10-20-14.1(c).
- (10) Approvals granted under 329 IAC 10-21 unless the commissioner determines otherwise.
- (11) Any modification to the solid waste land disposal facility that the commissioner determines will improve the operation of the facility without significantly altering the approved solid waste land disposal permit.
- (12) An ADC under 329 IAC 10-20-14.1(d).
- (13) Improvements to drainage at the facility.

(*Solid Waste Management Board; 329 IAC 10-2-97.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3765*)

329 IAC 10-2-98 “Intrawell comparison” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 98. “Intrawell comparison” means statistically comparing the historical or background data of one (1) ground water

monitoring well to the present ground water result of that same ground water monitoring well. (*Solid Waste Management Board; 329 IAC 10-2-98; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775*)

329 IAC 10-2-99 “Karst terrains” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 99. “Karst terrains” means an area where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present to karst terrains include any of the following:

- (1) Sinkholes.
- (2) Sinking streams.
- (3) Caves.
- (4) Large springs.
- (5) Blind valleys.

(*Solid Waste Management Board; 329 IAC 10-2-99; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775*)

329 IAC 10-2-100 “Land application unit” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 100. “Land application unit” means an area where waste is applied onto or incorporated into the soil surface, excluding manure spreading operations, for agricultural purposes. (*Solid Waste Management Board; 329 IAC 10-2-100; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775*)

329 IAC 10-2-101 “Land owner” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 101. “Land owner” means an owner of real property. (*Solid Waste Management Board; 329 IAC 10-2-101; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1775*)

329 IAC 10-2-102 “Lateral expansion” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 102. “Lateral expansion” means a horizontal expansion of the solid waste boundaries of more than one (1) acre beyond a previously permitted solid waste boundary that meets the requirements for a major modification as defined by section 109 of this rule. The closest sides of the solid waste boundary of the permitted area and the solid waste boundary of the lateral expansion must be within fifty (50) feet or less of each other. (*Solid Waste Management Board; 329 IAC 10-2-102; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766*)

329 IAC 10-2-103 “Leachate” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 103. “Leachate” means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, immiscible, or miscible material removed from such waste. (*Solid Waste Management Board; 329 IAC 10-2-103; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776*)

329 IAC 10-2-104 “Legal description” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 104. “Legal description” means information from the recorded deed that includes the county, township, range, section numbers, total acreage, and, if applicable, the metes and bounds description. (*Solid Waste Management Board; 329 IAC 10-2-104; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776*)

329 IAC 10-2-105 “Letter of credit” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 105. “Letter of credit” means an instrument issued by a bank or other financial institution, known as the issuer, in which the issuer agrees on behalf of its customer, known as the account party, to honor demands for payment to the beneficiary usually upon presentation of the documents specified in the instrument. (*Solid Waste Management Board; 329 IAC 10-2-105; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776*)

329 IAC 10-2-106 “Liquid waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 106. “Liquid waste” means any waste material that contains free liquids as determined by Method 9095 (Paint Filter Liquids Test), as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, EPA Publication SW-846 [Third Edition, November 1986, as amended by Updates 1 (July 1992), 2 (September 1994), 2A (August 1993), and 2B (January 1995)]. (*Solid Waste Management Board; 329 IAC 10-2-106; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776*)

329 IAC 10-2-107 “Lithified earth material” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 107. “Lithified earth material” means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. The term does not include manmade materials such as fill, concrete, asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface. (*Solid Waste Management Board; 329 IAC 10-2-107; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776*)

329 IAC 10-2-108 “Lower explosive limit” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 108. “Lower explosive limit” means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees Celsius (25°C) and atmospheric pressure. (*Solid Waste Management Board; 329 IAC 10-2-108; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776*)

329 IAC 10-2-109 “Major modification of solid waste land disposal facilities” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 109. “Major modification of solid waste land disposal facilities” means any increase in a permitted solid waste land disposal facility that would:

- (1) increase the permitted capacity to process or dispose of solid waste by the lesser of:
 - (A) more than ten percent (10%); or

(B) five hundred thousand (500,000) cubic yards; or

(2) change the permitted solid waste boundary by more than one (1) acre.

(Solid Waste Management Board; 329 IAC 10-2-109; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766)

329 IAC 10-2-110 “Maximum contaminant level” or “MCL” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 110. “Maximum contaminant level” or “MCL” means the levels developed under Section 1412 of the Safe Drinking Water Act, codified under 40 CFR 141. *(Solid Waste Management Board; 329 IAC 10-2-110; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1776)*

329 IAC 10-2-111 “Maximum horizontal acceleration in lithified earth material” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 111. “Maximum horizontal acceleration in lithified earth material” means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment. *(Solid Waste Management Board; 329 IAC 10-2-111; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777)*

329 IAC 10-2-112 “Minor modification of solid waste land disposal facilities” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 112. (a) “Minor modification of solid waste land disposal facilities” means any increase in a permitted solid waste land disposal facility that would not:

(1) increase the facility’s permitted capacity to dispose of solid waste by the lesser of:

(A) more than ten percent (10%); or

(B) five hundred thousand (500,000) cubic yards;

(2) change the permitted solid waste boundary by more than one (1) acre;

(3) include those items determined to be insignificant modifications by 329 IAC 10-3-3(b) or by the commissioner; or

(4) include those items determined to be major modifications by section 109 of this rule.

(b) The term includes:

(1) an alternative daily cover (ADC) under 329 IAC 10-20-14.1(e); and

(2) a baled waste management plan under 329 IAC 10-20-31(3).

(Solid Waste Management Board; 329 IAC 10-2-112; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766)

329 IAC 10-2-113 “Monitoring boundary” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 113. “Monitoring boundary” means the vertical plane provided by the ground water monitoring wells that are nearest to the permitted solid waste disposal boundary and are not hydraulically upgradient from the permitted solid waste disposal boundary. The vertical plane extends through the uppermost aquifer. *(Solid Waste Management Board; 329 IAC 10-2-113; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766)*

329 IAC 10-2-114 “Mulch” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 114. "Mulch" means a natural or artificial layer of plant residue or other material covering the land surface that conserves moisture, holds soil in place, aids in establishing plant cover, and minimizes soil temperature fluctuations. (*Solid Waste Management Board; 329 IAC 10-2-114; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777*)

329 IAC 10-2-115 "Municipal solid waste" or "MSW" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 115. "Municipal solid waste" or "MSW" means any solid waste generated by community activities or the operation of residential or commercial establishments. The term does not include:

- (1) construction/demolition waste;
- (2) special waste as defined in section 179 of this rule;
- (3) infectious waste as defined in section 96 of this rule; or
- (4) waste that:

(A) results from the combustion of coal; and

(B) is referenced under IC 13-1-12-9 [*IC 13-1-12-9 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*].

(*Solid Waste Management Board; 329 IAC 10-2-115; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777*)

329 IAC 10-2-116 "Municipal solid waste landfill" or "MSWLF" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20-21; IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 116. "Municipal solid waste landfill" or "MSWLF" means a solid waste land disposal facility that is permitted to receive municipal solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. An MSWLF is a sanitary landfill for purposes of IC 13-20-21. An MSWLF also may receive commercial solid waste, construction/demolition waste, small quantity generator waste, industrial solid waste, and special waste in accordance with 329 IAC 10-8.1. Such a landfill may be publicly or privately owned. (*Solid Waste Management Board; 329 IAC 10-2-116; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767*)

329 IAC 10-2-117 "Municipal solid waste landfill unit" or "MSWLF unit" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 117. "Municipal solid waste landfill unit" or "MSWLF unit" means a discrete area of land or an excavation that is permitted to receive municipal solid waste for disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 CFR 257.2. An MSWLF also may receive commercial solid waste, construction/demolition waste, small quantity generator waste, industrial solid waste, and special waste in accordance with 329 IAC 10-8.1. The landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. (*Solid Waste Management Board; 329 IAC 10-2-117; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767*)

329 IAC 10-2-118 "Net worth" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 118. "Net worth" means total assets minus total liabilities. (*Solid Waste Management Board; 329 IAC 10-2-118; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778*)

329 IAC 10-2-119 “New municipal solid waste landfill unit” or “new MSWLF unit” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 119. “New municipal solid waste landfill unit” or “new MSWLF unit” means any MSWLF unit that has not received solid waste. (*Solid Waste Management Board; 329 IAC 10-2-119; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778*)

329 IAC 10-2-120 “Nonaquifer material” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 120. “Nonaquifer material” means an aquitard with a hydraulic conductivity no greater than 1×10^{-5} cm/sec. (*Solid Waste Management Board; 329 IAC 10-2-120; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778*)

329 IAC 10-2-121 “Nonmunicipal solid waste landfill” or “non-MSWLF” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-20-21; IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 121. “Nonmunicipal solid waste landfill” or “non-MSWLF” means a solid waste land disposal facility that is permitted to receive general types of solid waste, excluding municipal solid waste as defined in section 115 of this rule and hazardous waste regulated by 329 IAC 3.1, and operated by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with cover material at the end of each working day. A nonmunicipal solid waste landfill is a sanitary landfill for purposes of IC 13-20-21. (*Solid Waste Management Board; 329 IAC 10-2-121; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767*)

329 IAC 10-2-121.1 “Nonmunicipal solid waste landfill unit” or “non-MSWLF unit” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 121.1. “Nonmunicipal solid waste landfill unit” or “non-MSWLF unit” means a discrete area of land or an excavation that is permitted to receive general types of solid waste, excluding municipal solid waste as defined in section 115 of this rule and hazardous waste regulated by 329 IAC 3.1, for disposal and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 CFR 257.2. Such a landfill unit may be publicly or privately owned. A nonmunicipal solid waste landfill unit may be a new nonmunicipal solid waste landfill unit, an existing nonmunicipal solid waste landfill unit, or a lateral expansion. (*Solid Waste Management Board; 329 IAC 10-2-121.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-2-122 “Normal water line” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 122. “Normal water line” means the average normal water level, as determined by the department of natural resources under 310 IAC 6, or the average boundary of the water as evidenced by either water level records or changes in the character of vegetation and soil due to the presence of the water. (*Solid Waste Management Board; 329 IAC 10-2-122; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778*)

329 IAC 10-2-123 “Occupant” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 123. "Occupant" means the person who resides in or uses as an owner or tenant the structure, facility, or property. (*Solid Waste Management Board; 329 IAC 10-2-123; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778*)

329 IAC 10-2-124 "Offices" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 124. "Offices" means places where a particular kind of business is transacted or a service is supplied. (*Solid Waste Management Board; 329 IAC 10-2-124; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045*)

329 IAC 10-2-125 "On-site" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 125. "On-site" means all areas within the facility boundary. (*Solid Waste Management Board; 329 IAC 10-2-125; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778*)

329 IAC 10-2-126 "On-site road" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 126. "On-site road" means a road for the passage of vehicles from the solid waste land disposal facility entrance to the disposal area or other areas at a permitted solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-126; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1778; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767*)

329 IAC 10-2-127 "Open burning" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 127. "Open burning" means the combustion of solid waste in the open or in an open dump without:

- (1) control of combustion air to maintain adequate temperature for efficient combustion;
- (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; or
- (3) control of the emissions of the combustion products.

(*Solid Waste Management Board; 329 IAC 10-2-127; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779*)

329 IAC 10-2-128 "Open dump" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 128. "Open dump" means the consolidation of solid waste from one (1) or more sources, or the disposal of solid waste at a single disposal site:

- (1) without a solid waste land disposal facility permit; and
- (2) that is established and maintained without cover and without regard to the possibilities of contamination of surface or subsurface water resources.

(*Solid Waste Management Board; 329 IAC 10-2-128; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779*)

329 IAC 10-2-129 "Operating days" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 129. "Operating days" means time expressed in total number of days during which a solid waste land disposal facility is open to actively accept solid waste for disposal. (*Solid Waste Management Board; 329 IAC 10-2-129; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767*)

329 IAC 10-2-130 "Operator" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 130. "Operator" means the person or persons responsible for the overall operation of a solid waste land disposal facility or part of a solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-130; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767*)

329 IAC 10-2-131 "Owner" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 131. "Owner" means the person who owns a solid waste land disposal facility or part of a solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-131; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-132 "Partial closure" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 132. "Partial closure" means those activities required at the end of waste acceptance for an area of a solid waste land disposal facility, including the placement of final cover and the establishment of vegetation in accordance with approved closure plans but exclusive of monitoring and maintenance activities required under post-closure care. (*Solid Waste Management Board; 329 IAC 10-2-132; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-132.1 "Partial closure certification" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 132.1. "Partial closure certification" means a written certification signed by the owner, operator, or permittee and an independent registered professional engineer submitted to the commissioner stating that partial closure for a unit or units of a solid waste land disposal facility has been completed in accordance with the approved closure plan. (*Solid Waste Management Board; 329 IAC 10-2-132.1; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-133 "Permit" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-18; IC 13-20; IC 25-31; IC 36-9-30

Sec. 133. "Permit" means a permit, a determination related to a permit, license, registration, certificate, or other type of authorization required before construction or operation, that may be issued by the commissioner under IC 13-15 or IC 13-20. (*Solid Waste Management Board; 329 IAC 10-2-133; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747*)

329 IAC 10-2-134 "Permittee" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 134. "Permittee" means the person who applies for and receives a permit from the department. (*Solid Waste Management Board; 329 IAC 10-2-134; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779*)

329 IAC 10-2-135 "Person" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 135. "Person" means any of the following:

- (1) An individual.
- (2) A partnership.
- (3) A copartnership.
- (4) A firm.
- (5) A company.
- (6) A corporation.
- (7) An association.
- (8) A joint stock company.
- (9) A trust.
- (10) An estate.
- (11) A municipal corporation.
- (12) A city.
- (13) A school city.
- (14) A town.
- (15) A school town.
- (16) A school district.
- (17) A school corporation.
- (18) A county.
- (19) Any consolidated unit of government.
- (20) A political subdivision.
- (21) A solid waste management district.
- (22) A state agency.
- (23) A federal government or agency.
- (24) Any other legal entity.

(*Solid Waste Management Board; 329 IAC 10-2-135; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779*)

329 IAC 10-2-135.1 "Petroleum contaminated spill waste" defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 135.1. (a) "Petroleum contaminated spill waste" means a waste or a tank bottom resulting from a spill, release, or leak of an aboveground, underground, or transportation storage tank or tank system, vehicle fuel tank, or pipeline that stores or transports refined, commercial, or used petroleum products.

- (b) Petroleum contaminated spill waste contains virgin or used petroleum such as:
- (1) gasoline (leaded or unleaded);
 - (2) heating oils;
 - (3) diesel fuel;
 - (4) asphaltic suspension;
 - (5) hydraulic fluid;
 - (6) jet fuel;
 - (7) kerosene;
 - (8) crude or refined oils that do not contain polychlorinated biphenyls (PCBs); or
 - (9) any combination of subdivisions (1) through (8).

(c) Petroleum contaminated spill waste may contain the following:

(1) Soils, vegetation, concrete, or asphalt building materials, and other materials that have been contaminated as the result of events listed in subsection (a).

(2) Absorbent pads, booms, or other absorbent materials designed to contain spills.

(3) Sand, gravel, straw, or other media used to contain or absorb the spilled materials.

(d) Petroleum contaminated spill waste is not a hazardous waste under 329 IAC 3.1 if it is exempted under 40 CFR 261.4(b)(10). (*Solid Waste Management Board; 329 IAC 10-2-135.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1704, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-2-136 “Piezometer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 136. “Piezometer” means a type of monitoring well or other device that is constructed for the purpose of measuring hydraulic head in ground water. (*Solid Waste Management Board; 329 IAC 10-2-136; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780*)

329 IAC 10-2-137 “Pollution control waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 137. “Pollution control waste” includes liquid, solid, semisolid, or gaseous waste generated as a direct or indirect result from the removal of contaminants from air, water, or land and may include, but is not limited to, wastes such as:

(1) water and wastewater treatment sludges;

(2) baghouse dust;

(3) scrubber sludges;

(4) chemical spill clean-up wastes; or

(5) remedial activity clean-up wastes.

(*Solid Waste Management Board; 329 IAC 10-2-137; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780*)

329 IAC 10-2-138 “Poor foundation conditions” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 138. “Poor foundation conditions” means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a MSWLF unit. Poor foundation conditions may be caused by conditions such as expansive soil, or soils subject to rapid settlement such as loess, unconsolidated soils, wetland soils, or other unstable soil conditions. See also the definition of “unstable area” in section 194 of this rule. (*Solid Waste Management Board; 329 IAC 10-2-138; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780*)

329 IAC 10-2-139 “Post-closure” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 139. “Post-closure” means the monitoring and maintenance activities required after final closure of a solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-139; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-140 “Post-closure cost estimate” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 140. "Post-closure cost estimate" means the original or most recently submitted written estimate, in current dollars, of the total cost of post-closure monitoring and maintenance of the solid waste land disposal facility during the entire post-closure care period in accordance with the post-closure plan. (*Solid Waste Management Board; 329 IAC 10-2-140; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-141 "Potable" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 141. "Potable" means fit to drink. (*Solid Waste Management Board; 329 IAC 10-2-141; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780*)

329 IAC 10-2-141.3 "Potable ground water source" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 141.3. "Potable ground water source" means an aquifer that is capable of sustaining the daily drinking water needs of an average single family dwelling based on natural yield and quality and that meets all the following criteria:

- (1) Natural yield of six and forty-five hundredths (6.45) cm³/sec (one hundred fifty (150) gallons per day) to a well or spring throughout the year.
- (2) Hydraulic conductivity greater than or equal to one ten-thousandth centimeters per second (1 x 10⁻⁴cm/sec).
- (3) Total dissolved solids concentration less than ten thousand (10,000) milligrams per liter.
- (4) Levels of natural contaminants that can be treated using conventional household water supply treatment methods.

(*Solid Waste Management Board; 329 IAC 10-2-141.3; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-142 "Practical quantitation limit" or "PQL" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 142. "Practical quantitation limit" or "PQL" means the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions available to the solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-142; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3768*)

329 IAC 10-2-143 "Processing" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 143. "Processing" has the meaning set forth in 329 IAC 11-2-30. (*Solid Waste Management Board; 329 IAC 10-2-143; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780*)

329 IAC 10-2-144 "Project engineer" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 144. "Project engineer" means the specific individual designated by the owner with knowledge of the project, project plans, specifications, and quality assurance/quality control (QA/QC) document and shall be supervised by a registered professional engineer. (*Solid Waste Management Board; 329 IAC 10-2-144; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1780*)

329 IAC 10-2-145 “Public water supply stabilized cone of depression area” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 145. “Public water supply stabilized cone of depression area” means the surface and subsurface area between a public water supply well or well field and the ninety-nine percent (99%) theoretical maximum extent of the stabilized cone of depression of that well or well field considering all flow system boundaries and seasonal fluctuations. (*Solid Waste Management Board; 329 IAC 10-2-145; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781*)

329 IAC 10-2-146 “Public water supply system” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 146. “Public water supply system” means a public water supply for the provision to the public of piped water for human consumption and use, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water supply system is either a community water system or a noncommunity water system as defined in 327 IAC 8-2-1(8) and 327 IAC 8-2-1(41). (*Solid Waste Management Board; 329 IAC 10-2-146; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2748*)

329 IAC 10-2-147 “Qualified ground water scientist” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 147. “Qualified ground water scientist” means a scientist or engineer who:

- (1) has received a baccalaureate or postgraduate degree in the natural sciences or engineering; and
- (2) is trained and experienced in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound, professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action.

(*Solid Waste Management Board; 329 IAC 10-2-147; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781*)

329 IAC 10-2-147.5 “Quality assurance/quality control” or “QA/QC” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 147.5. “Quality assurance/quality control” or “QA/QC” means the program to assure that all data be scientifically valid, defensible, and of known precision and accuracy. (*Solid Waste Management Board; 329 IAC 10-2-147.5; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769*)

329 IAC 10-2-148 “Real property boundary” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 148. “Real property boundary” means the outermost perimeter of the land owned by a person upon which the solid waste land disposal facility is located, as the real property is described in the recorded deed and the current county or counties plats. (*Solid Waste Management Board; 329 IAC 10-2-148; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769*)

329 IAC 10-2-149 “Recovery” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 149. “Recovery” means obtaining materials or energy for commercial or industrial use from solid waste or hazardous waste. *(Solid Waste Management Board; 329 IAC 10-2-149; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781)*

329 IAC 10-2-150 “Regional aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 150. “Regional aquifer” means the aquifer used as a primary source of water for wells within one (1) mile of the solid waste land disposal facility. *(Solid Waste Management Board; 329 IAC 10-2-150; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781)*

329 IAC 10-2-151 “Registered land surveyor” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 151. “Registered land surveyor” means a land surveyor registered by the state under IC 25-31. *(Solid Waste Management Board; 329 IAC 10-2-151; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781)*

329 IAC 10-2-152 “Registered professional engineer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 152. “Registered professional engineer” means a professional engineer registered by the state under IC 25-31. *(Solid Waste Management Board; 329 IAC 10-2-152; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1781)*

329 IAC 10-2-152.5 “Regulated asbestos-containing material” or “RACM” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-18-1; IC 13-18-20

Sec. 152.5. (a) “Regulated asbestos-containing material” or “RACM” means the following:

- (1) Friable asbestos material defined at 40 CFR 61.141.
- (2) Category I nonfriable asbestos-containing material, defined at 40 CFR 61.141, that has become friable.
- (3) Category I nonfriable asbestos-containing material, defined at 40 CFR 61.141, that:
 - (A) will be; or
 - (B) has been;subjected to sanding, grinding, cutting, or abrading.
- (4) Category II nonfriable asbestos-containing material, defined at 40 CFR 61.141, that:
 - (A) has a high probability of becoming; or
 - (B) has become;crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition, renovation, or disposal operations.

(b) The term does not include regulated asbestos-containing materials that have not become solid waste. *(Solid Waste Management Board; 329 IAC 10-2-152.5; filed Sep 10, 1999, 9:24 a.m.: 23 IR 6)*

329 IAC 10-2-153 “Regulated hazardous waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 153. "Regulated hazardous waste" means a solid waste:

- (1) that is a hazardous waste as defined by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq., January 1, 1989) as amended;
- (2) that is not excluded from regulation as a hazardous waste under 329 IAC 3.1; and
- (3) that is not generated by a conditionally exempt small quantity generator as defined in 329 IAC 3.1.

(Solid Waste Management Board; 329 IAC 10-2-153; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782)

329 IAC 10-2-154 "Remaining disposal capacity" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 154. "Remaining disposal capacity" means the volume of permitted space in cubic yards available beyond the current date to continue to accept solid waste for final disposal at a solid waste land disposal facility. The remaining disposal capacity is calculated by subtracting the existing fill volume as determined by the contour map required by 329 IAC 10-20-8(a)(6), from the design capacity. This volume, which excludes areas under post-closure care, does not reflect the potential for additional volume that may become available through a vertical or lateral expansion. *(Solid Waste Management Board; 329 IAC 10-2-154; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782)*

329 IAC 10-2-155 "Remaining facility life" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 155. "Remaining facility life" means the estimated amount of time beyond the current date during which a solid waste land disposal facility is expected to continue to accept solid waste for final disposal. Remaining facility life is associated with increases or decreases in remaining disposal capacity, but the rate of capacity depletion may be affected by other factors such as changes in:

- (1) solid waste management techniques;
- (2) regional facility capacity; or
- (3) solid waste sources and destination.

The term does not include the post-closure period. *(Solid Waste Management Board; 329 IAC 10-2-155; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782)*

329 IAC 10-2-156 "Residential waste" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 156. "Residential waste" has the same meaning as household waste defined in section 90 of this rule. *(Solid Waste Management Board; 329 IAC 10-2-156; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782)*

329 IAC 10-2-157 "Residue" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 157. "Residue" means any solid waste remaining after incineration or processing that is not completely combusted or recovered, including any of the following:

- (1) Ash.
- (2) Ceramics.
- (3) Glass.
- (4) Metal.
- (5) Other inorganic substances or organic substances.

(Solid Waste Management Board; 329 IAC 10-2-157; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782)

329 IAC 10-2-158 “Responsible corporate officer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 158. “Responsible corporate officer” means a president, secretary, treasurer, or any vice president of the corporation in charge of a principal business function that includes the activity to be permitted. (*Solid Waste Management Board; 329 IAC 10-2-158; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782*)

329 IAC 10-2-159 “Restricted waste site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 159. “Restricted waste site” means a solid waste land disposal facility designed and operated to accommodate specific types of waste as specified in 329 IAC 10-9-4. (*Solid Waste Management Board; 329 IAC 10-2-159; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782*)

329 IAC 10-2-160 “Road demolition waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 160. “Road demolition waste” means any reinforced or unreinforced concrete or solidified asphalt. The term does not include liquid or uncured asphalt. (*Solid Waste Management Board; 329 IAC 10-2-160; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1782*)

329 IAC 10-2-161 “Run-off” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 161. “Run-off” means any rainwater and surface water that has not come into any contact with solid waste that drains over land from any part of a solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-161; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769*)

329 IAC 10-2-162 “Run-on” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 162. “Run-on” means any rainwater and surface water that drains over land onto any part of a solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-2-162; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769*)

329 IAC 10-2-163 “Salvaging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 163. “Salvaging” means the controlled and organized removal of materials from solid waste for utilization. (*Solid Waste Management Board; 329 IAC 10-2-163; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783*)

329 IAC 10-2-164 “Scavenging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 164. “Scavenging” means the uncontrolled and unauthorized removal or collection of materials from solid waste. (*Solid*

Waste Management Board; 329 IAC 10-2-164; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783)

329 IAC 10-2-165 “Secondary maximum contaminant level” or “SMCL” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 165. “Secondary maximum contaminant level” or “SMCL” means the level or concentration that has been established under Section 1412 of the Safe Drinking Water Act, as codified under 40 CFR 143.3. *(Solid Waste Management Board; 329 IAC 10-2-165; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783)*

329 IAC 10-2-166 “Sedimentation basin” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 166. “Sedimentation basin” means an artificial or natural surface structure to allow the settlement of any unconsolidated material carried by run-off from the facility. *(Solid Waste Management Board; 329 IAC 10-2-166; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783)*

329 IAC 10-2-167 “Seep” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 167. “Seep” means an area, generally small in nature, where water percolates slowly to the land surface and no visible flow of water occurs at the surface. *(Solid Waste Management Board; 329 IAC 10-2-167; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783)*

329 IAC 10-2-168 “Seismic impact zone” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 168. “Seismic impact zone” means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed one-tenth (0.10) gravitational pull in two hundred fifty (250) years. *(Solid Waste Management Board; 329 IAC 10-2-168; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783)*

329 IAC 10-2-168.1 “Sensitive environment” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 168.1. “Sensitive environment” means an area to which a solid waste land disposal facility poses a specific threat to the environment or to the public health because a small contamination release could have a significant impact. This may be due to proximity to other sensitive environments that include, but are not limited to:

- (1) aquifers of significance;
- (2) public water supply systems;
- (3) wellhead protection areas;
- (4) drinking water supply reservoirs;
- (5) areas requiring special protection, such as:
 - (A) regulated wetlands;
 - (B) karst terrains; or
 - (C) the critical habitat of an endangered species;
- (6) areas containing highly permeable soils or bedrock formations, such as karst carbonate formations; or
- (7) other special circumstances.

(Solid Waste Management Board; 329 IAC 10-2-168.1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1783; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769)

329 IAC 10-2-168.2 “Setback” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 168.2. “Setback” means the distance between a designated point and the permitted solid waste boundary of a solid waste land disposal facility as projected at the time of final closure and approved by the department as part of the solid waste land disposal facility’s original or modified permit. The designated point of a public or nonpublic school is the property boundary of public or nonpublic school property that contains a facility intended for regularly scheduled student use. *(Solid Waste Management Board; 329 IAC 10-2-168.2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769)*

329 IAC 10-2-169 “Significant stratum” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 169. “Significant stratum” means a geologic unit with a minimum thickness of eighteen (18) inches which, based on appearance, mainly color and texture, can be visually distinguished from other layers. *(Solid Waste Management Board; 329 IAC 10-2-169; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784)*

329 IAC 10-2-170 “Significant zone of saturation” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 170. “Significant zone of saturation” means a zone of saturation that may act as a preferential pathway of migration away from the limits of solid waste placement. *(Solid Waste Management Board; 329 IAC 10-2-170; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784)*

329 IAC 10-2-171 “Site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 171. “Site” means the land area on which a permitted solid waste land disposal facility is situated. *(Solid Waste Management Board; 329 IAC 10-2-171; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3769)*

329 IAC 10-2-172 “Sludge” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 172. “Sludge” means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant. *(Solid Waste Management Board; 329 IAC 10-2-172; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784)*

329 IAC 10-2-173 “Soil borings” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 173. “Soil borings” means holes drilled in the earth to identify soil types, subsurface materials, and water table levels. *(Solid Waste Management Board; 329 IAC 10-2-173; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784)*

329 IAC 10-2-174 “Solid waste” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-17; IC 13-18; IC 13-20-10; IC 25-31; IC 36-9-30

Sec. 174. (a) “Solid waste” means any:

- (1) garbage;
- (2) refuse;
- (3) sludge from a wastewater treatment plant;
- (4) sludge from a water supply treatment plant;
- (5) sludge from an air pollution control facility; or
- (6) other discarded material, including:
 - (A) ash residue;
 - (B) contaminated sediments;
 - (C) commercial waste;
 - (D) construction/demolition waste;
 - (E) hazardous waste;
 - (F) household waste;
 - (G) infectious waste;
 - (H) liquid waste;
 - (I) special waste;
 - (J) municipal solid waste;
 - (K) regulated hazardous waste;
 - (L) residential and nonresidential waste; and
 - (M) any solid, liquid, semisolid, or contained gaseous material.

(b) The term does not include:

- (1) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, 33 U.S.C. 1342, as amended February 4, 1987;
- (2) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, 42 U.S.C. 2014 et seq., as amended October 24, 1992;
- (3) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or
- (4) vegetative matter at composting facilities registered under IC 13-20-10.

(Solid Waste Management Board; 329 IAC 10-2-174; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2748)

329 IAC 10-2-175 “Solid waste boundary” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 175. “Solid waste boundary” means the outermost perimeter of the area within a solid waste land disposal facility that is permitted to receive solid waste for disposal. *(Solid Waste Management Board; 329 IAC 10-2-175; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1785)*

329 IAC 10-2-176 “Solid waste land disposal facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 176. (a) “Solid waste land disposal facility” means a permitted facility that accepts solid waste for deposit and covering in or on the ground surface. Permitted solid waste land disposal facilities must be classified into one (1) of the following types:

- (1) Municipal solid waste landfill (MSWLF).

- (2) Construction/demolition site.
- (3) Restricted waste site.
- (4) Nonmunicipal solid waste landfill.

(b) The term does not include solid waste processing or land application facilities or activities. (*Solid Waste Management Board; 329 IAC 10-2-176; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1785; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3770*)

329 IAC 10-2-177 “Solid waste management” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 177. “Solid waste management” means the systematic administration of solid waste activities that provide for:

- (1) collection;
- (2) source separation;
- (3) storage;
- (4) transportation;
- (5) transfer;
- (6) processing;
- (7) treatment; or
- (8) disposal.

(*Solid Waste Management Board; 329 IAC 10-2-177; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1785*)

329 IAC 10-2-178 “Solid waste processing facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 178. “Solid waste processing facility” has the meaning set forth in 329 IAC 11-2-43. (*Solid Waste Management Board; 329 IAC 10-2-178; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1785*)

329 IAC 10-2-179 “Special waste” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-215.1; IC 13-18-1; IC 13-18-20

Sec. 179. (a) “Special waste”, as defined at IC 13-11-2-215.1, means any solid waste from a nonresidential source that includes any of the following:

- (1) A sludge.
 - (2) An industrial process waste.
 - (3) A pollution control waste.
 - (4) Incinerator residues, except for:
 - (A) residues from combustion of waste regulated by 329 IAC 3.1 or 329 IAC 4 [329 IAC 4 was repealed filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083. See 329 IAC 4.1.]; or
 - (B) residues that exhibit hazardous waste characteristics.
 - (5) Regulated asbestos-containing material.
 - (6) Contaminated soil, residue, debris, and articles from the cleanup of a spill or release of materials listed in this subsection.
 - (7) Any waste listed in subdivisions (1) through (6) that is a free liquid or that contains free liquids unless otherwise exempted.
- (b) The term does not include the following:
- (1) Coal ash or flue gas desulfurization byproducts that will not react with water or moisture to produce heat that would adversely affect routine solid waste disposal operations.
 - (2) Construction/demolition waste unless it is:
 - (A) a regulated asbestos-containing material; or
 - (B) contaminated with other special waste as defined in subsection (a).
 - (3) Industrial or commercial waste that is similar to general household solid waste, including paper, cardboard, plastic, rubber,

wood, metal scrap, glass, office, and landscape waste.

(4) Food products in containers of not more than five (5) gallons, eighteen and nine-tenths (18.9) liters, or less with intact labels.

(5) Food products or food byproducts that include putrescible animal solids, vegetable solids, and semisolid wastes that result from the processing, handling, preparation, cooking, serving, or consumption of food or food materials from which free liquids have been removed and that are not contaminated with other special waste as defined in subsection (a).

(6) Catch basin settling pit grit or sediment from storm sewers, vehicle washes, and heavy equipment wash racks, or wastewater treatment plant grit and bar screenings from municipal wastewater treatment facilities that are not contaminated with special waste as defined in subsection (a).

(7) Individual special waste streams, excluding regulated asbestos-containing material,, that otherwise meet the definition in subsection (a), but are generated by a single generator in quantities of less than one hundred (100) kilograms or two hundred twenty (220) pounds per month and are disposed of in quantities of less than one thousand (1,000) kilograms or two thousand two hundred four (2,204) pounds per shipment, for the combined total of individual waste streams that are generated in quantities of less than one hundred (100) kilograms or two hundred twenty (220) pounds per month.

(8) Foundry sands, excluding fines and dusts from dust collector and pollution control devices, that meet Type III restricted waste site criteria in 329 IAC 10-9.

(9) Infectious waste as defined in section 96 of this rule.

(10) Empty containers that meet the requirements of 329 IAC 10-8.1-3(k).

(11) Slag from steel and iron producing industries.

(12) Refractory brick, fire clay refractory earth, fire brick, and ceramic block that meet Type III criteria in 329 IAC 10-9.

(13) Fully reacted fiberglass reinforced plastic composite and cured or fully reacted fiberglass insulation.

(14) Waste materials from manufacturing operations that are consistent with and similar to construction/demolition debris as defined in section 37 of this rule.

(Solid Waste Management Board; 329 IAC 10-2-179; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1785; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1704, eff one hundred eighty (180) days after filing with the secretary of state; filed Sep 10, 1999, 9:24 a.m.: 23 IR 6)

329 IAC 10-2-180 “Statistically significant increase for ground water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 180. “Statistically significant increase for ground water” means an increase of a constituent's concentration that is too large to be attributed to natural variation or laboratory and sampling variance in the ground water between ground water quality at the monitoring boundary for each constituent and the background ground water quality for the constituent. *(Solid Waste Management Board; 329 IAC 10-2-180; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786)*

329 IAC 10-2-181 “Storage” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 181. “Storage” means the retention, containment, or accumulation of solid waste on a temporary basis in such a manner that it does not threaten or potentially threaten human health or impact or potentially impact the environment, for a period of more than twenty-four (24) hours, in such a manner as not to constitute disposal of the waste. It must be a rebuttable presumption that storage of waste for more than six (6) months constitutes disposal. *(Solid Waste Management Board; 329 IAC 10-2-181; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786)*

329 IAC 10-2-182 “Structural components” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 182. “Structural components” means:

(1) liners;

- (2) leachate collection systems;
- (3) final covers;
- (4) run-on or run-off systems; and
- (5) any other components used in the construction and operation of the solid waste land disposal facility that are necessary for the protection of human health and the environment.

(Solid Waste Management Board; 329 IAC 10-2-182; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3770)

329 IAC 10-2-183 “Structural fill” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 183. “Structural fill” means soil material that is placed in lifts and compacted to a specified density as determined by the CQA/CQC document or by the design specification. *(Solid Waste Management Board; 329 IAC 10-2-183; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786)*

329 IAC 10-2-184 “Surety bond” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 184. “Surety bond” means a contract by which a surety company engages to be answerable for the default or debts of a permittee on responsibilities relating to closure or post-closure care, and agrees to satisfy these responsibilities if the permittee does not, in accordance with the terms specified in 329 IAC 10-39. *(Solid Waste Management Board; 329 IAC 10-2-184; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786)*

329 IAC 10-2-185 “Surface impoundment” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 185. (a) “Surface impoundment” means a facility or part of a facility that:

- (1) is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials;
 - (2) holds or is designed to hold an accumulation of liquid wastes or wastes containing free liquids; and
 - (3) is not an injection well.
- (b) Examples of surface impoundments may include the following:
- (1) Holding, storage, settling, and aeration pits.
 - (2) Holding, storage, settling, and aeration ponds.
 - (3) Holding, storage, settling, and aeration lagoons.

(Solid Waste Management Board; 329 IAC 10-2-185; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786)

329 IAC 10-2-186 “Surface water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 186. “Surface water” means water present on the surface of the earth, including:

- (1) streams;
- (2) lakes;
- (3) ponds;
- (4) rivers;
- (5) swamps;
- (6) marshes;
- (7) wetlands; or

(8) rainwater present on the earth.

(Solid Waste Management Board; 329 IAC 10-2-186; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1786)

329 IAC 10-2-187 “Surficial aquifer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 187. “Surficial aquifer” means an aquifer consisting of sand and gravel, which includes bedrock that is hydraulically interconnected with the sand and gravel, that is covered by less than ten (10) feet of nonaquifer material. *(Solid Waste Management Board; 329 IAC 10-2-187; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)*

329 IAC 10-2-188 “Tons per day” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 188. “Tons per day” means tons per operating day. *(Solid Waste Management Board; 329 IAC 10-2-188; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)*

329 IAC 10-2-188.1 “Topsoil” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 188.1. “Topsoil” means any of the following:

- (1) The dark-colored surface layer, or A horizon, of a soil. When present, it ranges in depth from a fraction of an inch to three (3) feet.
- (2) Surface soil equivalent to the plow layer of cultivated soils.
- (3) Refers to any surface layers enriched in organic matter and having textural and structural characteristics favorable to plant growth.

(Solid Waste Management Board; 329 IAC 10-2-188.1; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2748)

329 IAC 10-2-189 “Transfer station” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 189. “Transfer station” has the meaning set forth in 329 IAC 11-2-47. *(Solid Waste Management Board; 329 IAC 10-2-189; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)*

329 IAC 10-2-190 “Trust fund” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 190. “Trust fund” means a fund established by a permittee and held by a financial institution licensed by Indiana, as the trustee with a fiduciary responsibility to carry out the terms of the trust, as specified in 329 IAC 10-39-10, for the benefit of the department. *(Solid Waste Management Board; 329 IAC 10-2-190; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)*

329 IAC 10-2-191 “Twenty-five year, twenty-four hour precipitation event” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 191. “Twenty-five (25) year, twenty-four (24) hour precipitation event” means the maximum twenty-four (24) hour precipitation event with the probable recurrence interval of once in twenty-five (25) years as determined in the following:

(1) "Rainfall Frequency Atlas of the United States for Duration from 30 Minutes to 24 Hours and Return Periods from 1 to 100 Years", Technical Paper 40, Weather Bureau, United States Department of Commerce.

(2) "Rainfall Frequency for Indiana", Indiana department of natural resources, division of water, November 1994.

(Solid Waste Management Board; 329 IAC 10-2-191; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)

329 IAC 10-2-192 "Unauthorized solid waste" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 192. "Unauthorized solid waste" means solid waste that is prohibited from disposal in a solid waste land disposal facility by:

(1) permit conditions;

(2) Indiana statutes or rules; or

(3) federal acts or regulations.

(Solid Waste Management Board; 329 IAC 10-2-192; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2748)

329 IAC 10-2-193 "Unit of government" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 193. "Unit of government" means a county, municipality, township, or solid waste management district. *(Solid Waste Management Board; 329 IAC 10-2-193; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)*

329 IAC 10-2-194 "Unstable area" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 194. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the solid waste land disposal facility's structural components responsible for preventing releases from within the solid waste boundary. The term may include poor foundation conditions, underground mines, mine spoil, areas susceptible to mass movements, and karst terrains. *(Solid Waste Management Board; 329 IAC 10-2-194; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3770)*

329 IAC 10-2-195 "Upgradient ground water monitoring well" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 195. "Upgradient ground water monitoring well" means an approved ground water monitoring well that is used to obtain ground water and is located at any point beyond the permitted solid waste boundary that is extrapolated as having a higher potentiometric surface than that of the permitted solid waste boundary. *(Solid Waste Management Board; 329 IAC 10-2-195; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1787)*

329 IAC 10-2-196 "Upgradient water quality" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 196. "Upgradient water quality" means the chemical composition of water in the stream or ground water that is in the direction of increasing static head of the solid waste boundary and that is representative of the flow system before it has passed by or beneath the monitoring boundary of the solid waste land disposal facility. *(Solid Waste Management Board; 329 IAC 10-2-196; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3770)*

329 IAC 10-2-197 “Uppermost aquifer system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 197. “Uppermost aquifer system” means the geologic formation nearest the natural ground surface within the facility boundary of a solid waste land disposal facility that is an aquifer as well as lower aquifers that are hydraulically interconnected with the uppermost aquifer. (*Solid Waste Management Board; 329 IAC 10-2-197; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3770*)

329 IAC 10-2-197.1 “U.S. Environmental Protection Agency Publication SW-846” or “SW-846” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 197.1. “U.S. Environmental Protection Agency Publication SW-846” or “SW-846” means “Test Methods for Evaluating Solid Waste, Physical Chemical Methods”, U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996), that is incorporated by reference at 329 IAC 10-7.1-2(a)(1). (*Solid Waste Management Board; 329 IAC 10-2-197.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1705, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-2-198 “Vertical expansion” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 198. “Vertical expansion” means an increase in the currently permitted elevation the solid waste land disposal facility may fill with solid waste, cover, and final cover. (*Solid Waste Management Board; 329 IAC 10-2-198; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788*)

329 IAC 10-2-199 “Washout” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 199. “Washout” means the carrying away of solid waste by waters of the base flood. (*Solid Waste Management Board; 329 IAC 10-2-199; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788*)

329 IAC 10-2-199.1 “Waste determination” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 199.1. (a) As used in this article, “waste determination” means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish:

- (1) the regulatory status of that waste under the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.;
- (2) the regulatory status of that waste under other federal and state laws that may apply to that waste, including, but not limited to:
 - (A) the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.;
 - (B) the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq.; and
 - (C) the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.; and
- (3) the existence of any other environmental risks posed by that waste, including risks posed by handling the waste and by storing or reusing the waste if storage or reuse of the waste is anticipated.

(b) Waste determination includes the hazardous waste determination carried out under 40 CFR 262.11. (*Solid Waste Management Board; 329 IAC 10-2-199.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1705, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-2-200 “Waste management unit boundary” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 200. “Waste management unit boundary” means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer. (*Solid Waste Management Board; 329 IAC 10-2-200; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788*)

329 IAC 10-2-201 “Waste pile” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 201. “Waste pile” means any noncontainerized accumulation of nonflowing solid waste that is used for treatment or storage. (*Solid Waste Management Board; 329 IAC 10-2-201; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788*)

329 IAC 10-2-201.1 “Waste stream” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 201.1. “Waste stream,” as used in section 179 of this rule, 329 IAC 10-7.1, and 329 IAC 10-8.1, means the waste generated by a particular manufacturing process, process unit, product tank, or waste management unit. The characteristics of the waste stream are determined at the point of waste generation. A waste stream has one (1) or more of the following characteristics:

- (1) A single generator at a single geographic location.
- (2) A single point of generation.
- (3) A single exit point from a process or process unit.
- (4) A single waste determination as required by 329 IAC 10-7.1.

(*Solid Waste Management Board; 329 IAC 10-2-201.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1705, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3366*)

329 IAC 10-2-202 “Water course” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 202. “Water course” means the path taken by flowing surface water. (*Solid Waste Management Board; 329 IAC 10-2-202; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788*)

329 IAC 10-2-203 “Water pollution” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 203. “Water pollution” means:

- (1) actual or threatened alteration of the physical, thermal, chemical, biological, bacteriological, or radioactive properties of any waters; or
- (2) the discharge or threatened discharge of any contaminant into any waters that does or can create a nuisance or render the waters harmful, detrimental, or injurious to:
 - (A) public health, safety, or welfare;
 - (B) domestic, commercial, industrial, agricultural, recreational, or other legitimate uses; or
 - (C) livestock, wild animals, birds, fish, or aquatic life.

(*Solid Waste Management Board; 329 IAC 10-2-203; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788*)

329 IAC 10-2-204 “Water table” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 204. “Water table” means the upper surface of the ground water at which the fluid pressure of the ground water is equal to atmospheric pressure. *(Solid Waste Management Board; 329 IAC 10-2-204; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1788)*

329 IAC 10-2-205 “Waters” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 205. (a) “Waters” means the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, that are wholly or partially within, flow through, or border upon this state.

(b) The term does not include any off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution. *(Solid Waste Management Board; 329 IAC 10-2-205; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789)*

329 IAC 10-2-206 “Well cluster” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 206. “Well cluster” means a number of monitoring wells grouped closely together but not in the same borehole and often screened at different positions within a thick stratigraphic sequence or screened at different stratigraphic horizons. *(Solid Waste Management Board; 329 IAC 10-2-206; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789)*

329 IAC 10-2-206.3 “Wentworth grain-size scale” defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-11-2-17; IC 13-18; IC 25-31; IC 36-9-30

Sec. 206.3. “Wentworth grain-size scale” means grain-size divisions defined by the following:

Grain Size Scales*		
Grade Limits in Millimeters		Grade Name
Lower Limit	Upper Limit	
256 and above		Boulders
64	256	Cobbles
16	64 Coarse	Pebbles
4	16 Fine	
2	4	Granules
1	2 Very Coarse	Sand
0.5	1 Coarse	
0.25	0.5 Medium	
0.125	0.25 Fine	
0.062	0.125 Very Fine	
0.031	0.062 Very Coarse	Silt
0.016	0.031 Coarse	
0.008	0.016 Medium	
0.004	0.008 Fine	
0.002	0.004 Very Fine	
Below 0.002	0.002	Clay

*IDEM, Requirements for Describing Unconsolidated Deposits, revised November 19, 1988. *(Solid Waste Management*

Board; 329 IAC 10-2-206.3; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3770; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27)

329 IAC 10-2-207 “Wetlands” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 207. “Wetlands” means those areas classified as jurisdictional wetlands or jurisdictional waters of the United States by the United States Army Corps of Engineers under authority from the Clean Water Act, 33 U.S.C. 1344. *(Solid Waste Management Board; 329 IAC 10-2-207; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789)*

329 IAC 10-2-208 “Working face” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 208. “Working face” means that portion of a solid waste land disposal facility where the solid waste is actively being deposited on a daily basis. *(Solid Waste Management Board; 329 IAC 10-2-208; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789)*

329 IAC 10-2-209 “Zone of aeration” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 209. “Zone of aeration” means a subsurface zone containing water under pressure less than that of the atmosphere including water held by capillarity and air or gases generally under atmospheric pressure. *(Solid Waste Management Board; 329 IAC 10-2-209; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789)*

329 IAC 10-2-210 “Zone of saturation” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 210. “Zone of saturation” means a subsurface zone in which all the interstices are filled with water under pressure greater than that of the atmosphere. *(Solid Waste Management Board; 329 IAC 10-2-210; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789)*

Rule 2.5. Definitions for Nonmunicipal Solid Waste Landfills, Construction/Demolition Sites, and Restricted Waste Sites Types I, II, III, and IV

329 IAC 10-2.5-1 Definitions

Authority: IC 13-14-8-7; IC 13-19
Affected: IC 13-11-2; IC 13-13-1-1; IC 13-17-5-8; IC 13-18-1; IC 13-18-20; IC 13-20-21; IC 16-18-2-371; IC 25-31; IC 36-9-30

Sec. 1. (a) In addition to the definitions in IC 13-17-5-8, the definitions in this section apply to nonmunicipal solid waste landfills, construction/demolition sites, and restricted waste sites Types I, II, III, and IV as follows:

- (1) In 329 IAC 10-1.
 - (2) In 329 IAC 10-3, except in 329 IAC 10-3-3.
 - (3) In 329 IAC 10-5 and 329 IAC 10-6.
 - (4) In 329 IAC 10-9, except in 329 IAC 10-9-2 and 329 IAC 10-9-4.
 - (5) In 329 IAC 10-24 through 329 IAC 10-38.
 - (6) In 329 IAC 10-39, except in 329 IAC 10-39-10 and 329 IAC 10-39-11.
- (b) The following definitions apply as described in subsection (a):
- (1) “Access road” means a road that leads to the entrance of a solid waste disposal facility, normally a county, state, or federal

highway.

(2) "Airport" means a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities and military airports.

(3) "Aquifer" means a geologic formation, group of formations, or part of a formation, that is capable of yielding a significant amount of ground water.

(4) "Base flood" means a flood that has a one percent (1%) or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in one hundred (100) years on the average over a significantly long period. In any given one hundred (100) year interval, such a flood may not occur or more than one (1) such flood may occur.

(5) "Bedrock" means cemented or consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials.

(6) "Board" means the solid waste management board as defined in IC 13-11-2-17(e).

(7) "Cell" means a volume of solid waste completely enclosed by cover.

(8) "Certified professional geologist" means a professional geologist certified by the state of Indiana pursuant to IC 25-17.6-1-4 [IC 25-17.6-1-4 was repealed by P.L.17-1999, SECTION 35, effective July 1, 1999].

(9) "Collection container system" means a group of containers for solid waste collection from noncommercial, nonindustrial, and noninstitutional sources and made available for use by the general public, such as county wide collection box systems.

(10) "Commissioner" refers to the commissioner of the department created under IC 13-13-1-1 (the department of environmental management).

(11) "Construction/demolition site" means a solid waste land disposal facility designed and operated to accommodate large volumes of solid waste having minimal potential for ground water contamination.

(12) "Contaminant" means any of the following:

(A) Pollutant as defined in the federal Water Pollution Control Act (33 U.S.C. 1362, as amended November 18, 1988).

(B) Radioactive material as regulated by the Atomic Energy Act of 1954 (42 U.S.C. 2014, as amended October 24, 1992).

(C) Solid or hazardous waste as determined by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq., as effective January 1, 1989).

(D) Hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq., as amended November 23, 1988).

(E) Any toxic substance as determined by the Toxic Substances Control Act (15 U.S.C. 2603 et seq., as amended October 22, 1986).

(F) Any commingled waste containing waste as defined in clauses (A) through (E), from whatever source that:

(i) is injurious to human health, plant or animal life, or property;

(ii) interferes unreasonably with the enjoyment of life or property; or

(iii) is otherwise violative of this article.

(13) "Cover" means any soil or other suitable material approved by the commissioner placed over the solid waste in accordance and applicable with 329 IAC 10-28-11, 329 IAC 10-28-12, 329 IAC 10-28-13, 329 IAC 10-30-2, 329 IAC 10-30-3, 329 IAC 10-36-11, 329 IAC 10-36-12, 329 IAC 10-36-13, 329 IAC 10-37-2, and 329 IAC 10-37-3.

(14) "Current closure cost estimate" means the original closure cost estimate or the most recent revision thereof made in accordance and applicable with 329 IAC 10-30-4(b) and 329 IAC 10-37-4(b).

(15) "Current post-closure cost estimate" means the original post-closure cost estimate or the most recent revisions thereof made in accordance and applicable with 329 IAC 10-31-3(b)(4) and 329 IAC 10-38-3(b)(3).

(16) "Daily cover" means that cover applied to the working face of the solid waste land disposal facility on a daily basis.

(17) "Department" refers to the department of environmental management created under IC 13-13.

(18) "Disposal" means the discharge, deposit, injection, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or any constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(19) "Dwelling" means any building that people inhabit on a regular or seasonal basis. The term shall include schools, hospitals, residences, factories, and offices.

(20) "Equivalent hydraulic conductivity" means the hydraulic conductivity averaged in such a manner as to represent the overall ability of a material to transmit flow.

(21) "Final closure" or "closure" means those activities to be completed at the end of waste acceptance at a facility, including

certification required by 329 IAC 10-30-7 and 329 IAC 10-37-7, as applicable, but not including those activities required after said certification.

(22) "Final cover" means any cover of a type, thickness, elevation, and slope approved by the commissioner for the termination of filling in an area.

(23) "Flood plain" means the areas adjoining a river, stream, or lake that are inundated by the base flood as determined by the Indiana department of natural resources.

(24) "Floodway" means the channel of a river or stream and those portions of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flow from the base flood as determined by the Indiana department of natural resources.

(25) "Garbage" means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the processing, handling, preparation, cooking, serving, or consumption of food or food materials.

(26) "Generator" or "generating facility" means any person or site, at, on, or by which one (1) or more solid wastes are generated, such as a manufacturing plant that may generate more than one (1) source of solid waste at the plant location. The term does not include a hazardous waste generator as regulated by 329 IAC 3.1.

(27) "Grading" means the contouring of land so that surface water flow and erosion are controlled according to a predetermined plan.

(28) "Ground water" means water below the land surface in the zone of saturation.

(29) "Hazardous waste" means a solid waste or combination of solid wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(A) cause or significantly contribute to an increase in mortality or increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(30) "Hydraulic gradient" means the head loss per unit length where the head loss is expressed in terms of the unit length so as to produce a dimensionless value.

(31) "Incinerator" means an engineered apparatus designed for the burning of solid waste under the effect of controls of temperature, retention time, air, and other combustion factors.

(32) "Industrial process waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste defined by 329 IAC 10-2-88 and regulated under 329 IAC 3.1. Such waste may include, but is not limited to, waste resulting from any of the following manufacturing processes:

(A) Electric power generation.

(B) Fertilizer or agricultural chemicals production.

(C) Food and related products or byproducts production.

(D) Inorganic chemicals production.

(E) Iron and steel manufacture or foundries.

(F) Leather and leather products production.

(G) Nonferrous metals manufacture or foundries.

(H) Organic chemicals production.

(I) Plastics and resins manufacture.

(J) Pulp and paper industry.

(K) Rubber and miscellaneous plastic products production.

(L) Stone, glass, clay, and concrete products.

(M) Textile manufacture.

(N) Transportation equipment.

(O) Oil and gas process and refinery wastes and disposed products.

(P) Painting, printing, and allied industries.

(Q) Contaminated, off-specification, or outdated wholesale products.

(R) Waste recycling and processing activities, excluding operations in which processing consists solely of segregating components of municipal solid waste and no chemical or physical alteration of the waste is performed.

The term does not include mining operations waste or oil and gas recovery waste.

(33) "Infectious waste" means waste that epidemiologic evidence indicates is capable of transmitting a dangerous

communicable disease (as defined by rule adopted under IC 16-41-2-1). Infectious waste includes the following:

- (A) Pathological wastes, including tissue, organs, body parts, and blood or body fluids in liquid or semiliquid form that are removed during surgery, biopsy, or autopsy.
- (B) Biological cultures and associated biologicals.
- (C) Contaminated sharps.
- (D) Infectious agent stock and associated biologicals.
- (E) Blood and blood products in liquid or semiliquid form.
- (F) Laboratory animal carcasses, body parts, and bedding.
- (G) Wastes (as defined under IC 16-18-2-371).

(34) "Infectious waste incinerator" means a solid waste incinerator that is used to burn infectious waste or mixture of infectious and noninfectious solid waste.

(35) "Karst topography" means a topography formed on a carbonate rock formation and dominated by features of solutional origin.

(36) "Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, immiscible, or miscible materials removed from such wastes.

(37) "Legal description" means a legal description of the real property, to include the county, township, range, and section numbers and, if applicable, the metes and bounds description, together with the acreage thereof.

(38) "Lift" means a layer of cells covering a designated area of a solid waste land disposal facility.

(39) "Locally useful aquifer" means an aquifer which, based on productivity, quality, depth, and alternate sources available, is a source or a probable source of water for any user or potential user within one (1) mile of a particular location.

(40) "Major modification" means any change in a permitted solid waste land disposal facility which would increase the facility's permitted capacity to process or dispose of solid waste.

(41) "Normal water line" means the average normal water level, where established through the Indiana department of natural resources, or the average boundary of the water as evidenced by either water level records or changes in the character of vegetation and soil due to the presence of the water.

(42) "On-site roads" means roads for the passage of vehicles from a facility entrance to the disposal area.

(43) "Open burning" means the combustion of any matter in the open or in an open dump.

(44) "Open dump" means the consolidation of solid waste from one (1) or more sources or the disposal of solid waste at a single disposal site that does not fulfill the requirements of a solid waste land disposal facility or other land disposal method as prescribed by law or regulations and that is established and maintained without cover and without regard to the possibilities of contamination of surface or subsurface water resources.

(45) "Operating personnel" means persons necessary to properly operate a solid waste land disposal or processing facility.

(46) "Partial closure" means those activities required at the end of waste acceptance for a solid waste land disposal facility or area of a solid waste land disposal facility to include the placement of final cover and the establishment of vegetation in accordance with approved closure plans but exclusive of monitoring and maintenance activities required under post-closure care.

(47) "Permittee" means any person to whom a solid waste facility permit has been issued.

(48) "Person" means:

- (A) an individual;
- (B) a partnership;
- (C) a copartnership;
- (D) a firm;
- (E) a company;
- (F) a corporation;
- (G) an association;
- (H) a joint stock company;
- (I) a trust;
- (J) an estate;
- (K) a municipal corporation;
- (L) a city;
- (M) a school city;

- (N) a town;
 - (O) a school town;
 - (P) a school district;
 - (Q) a school corporation;
 - (R) a county;
 - (S) any consolidated unit of government;
 - (T) a political subdivision;
 - (U) a state agency; or
 - (V) any other legal entity.
- (49) "Pollution control waste" includes liquid, solid, semisolid, or gaseous waste generated as a direct or indirect result from the removal of contaminants from air, water, or land and may include, but is not limited to, wastes such as:
- (A) water and wastewater treatment sludges;
 - (B) baghouse dust;
 - (C) scrubber sludges;
 - (D) chemical spill clean-up wastes; or
 - (E) remedial activity clean-up wastes.
- (50) "Post-closure" means the monitoring and maintenance activities required after final closure of a solid waste land disposal facility.
- (51) "Post-closure cost estimate" means the original written estimate, in current dollars, or the total cost of post-closure monitoring and maintenance of the solid waste land disposal facility during the entire post-closure care period in accordance with the post-closure plan.
- (52) "Processing" means the method, system, or other handling of solid waste so as to change its chemical, biological, or physical form or to render it more amenable for disposal or recovery of materials or energy, or the transfer of solid waste materials but excluding the transportation of solid waste.
- (53) "Recovery" means obtaining materials or energy for commercial or industrial use from solid waste or hazardous waste.
- (54) "Registered professional engineer" means a professional engineer registered by the state of Indiana pursuant to IC 25-31.
- (55) "Residue" means any solid waste remaining after incineration or processing that is not completely combusted or recovered, including any of the following:
- (A) Ash.
 - (B) Ceramics.
 - (C) Glass.
 - (D) Metal.
 - (E) Other inorganic substances or organic substances.
- (56) "Resource recovery" means the processing of solid waste into commercially valuable materials or energy.
- (57) "Restricted waste site" means a solid waste land disposal facility designed and operated to accommodate specific types of waste as specified in 329 IAC 10-9-4.
- (58) "Salvaging" means the controlled and organized removal of materials from solid waste for utilization.
- (59) "Sanitary landfill" means a solid waste land disposal facility designed to accommodate general types of solid waste, excluding waste regulated by 329 IAC 3.1, and operated by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with cover material at the end of each working day.
- (60) "Scavenging" means the uncontrolled and unauthorized removal of materials from solid waste.
- (61) "Site" means the land area on which a permitted solid waste land disposal facility is situated.
- (62) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.
- (63) "Soil borings" means the drilling of holes in the earth for the purpose of identifying soil types, subsurface materials, and water table level.
- (64) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, sludge from a water supply treatment plant, sludge from an air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities. However, the term does not include:

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(A) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point source subject to permits under Section 402 of the federal Water Pollution Control Act Amendments (33 U.S.C. 1342);

(B) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(C) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation under IC 13-11-2-205(a).

(65) "Solid waste boundary" means the outermost perimeter of the solid waste fill area, as it would exist at the time of closure, as projected in the facility's closure plan.

(66) "Solid waste facility" or "facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for processing, storing in conjunction with processing or disposal, or disposing of solid waste and may consist of several processing, storage, or disposal operational units, for example, one (1) or more landfills, surface impoundments, or combinations thereof.

(67) "Solid waste land disposal facility" means a permitted facility that accepts solid waste for deposit and covering in or on the ground surface. Permitted solid waste land disposal facilities must be classified into one (1) of the following types:

(A) Municipal solid waste landfills.

(B) Construction/demolition sites.

(C) Restricted waste sites.

(D) Nonmunicipal solid waste landfill.

The term does not include solid waste processing or land application facilities or activities.

(68) "Solid waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste under IC 13-11-2-209.

(69) "Solid waste processing facility" means a solid waste facility upon which is located a solid waste incinerator, transfer station, solid waste baler, solid waste shredder, resource recovery system, composting facility, or garbage grinding facility.

(70) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), that holds or is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

Examples of surface impoundments include the following:

(A) Holding, storage, settling, or aeration pits.

(B) Holding, storage, settling, or aeration ponds.

(C) Holding, storage, settling, or aeration lagoons.

(71) "Surface water" means water present on the surface of the earth, including:

(A) streams;

(B) lakes;

(C) ponds;

(D) rivers;

(E) swamps;

(F) marshes; or

(G) rainwater present on the earth.

(72) "Transfer station" means a facility at which solid waste is transferred from a vehicle or container to another vehicle or container for transportation or from one (1) mode of transportation to another mode of transportation, including, but not limited to, the transfer of a trailer, container, or waste from rail to road transportation. The term does not include the following:

(A) Collection container for solid waste.

(B) The transfer of solid waste at the point of generation.

(C) A recycling facility that receives distinct and recognizable solid waste items that do not require substantial further processing and are delivered back to manufacturing companies and reused. Based on a calendar quarter, a recycling facility shall have not more than ten percent (10%), by volume, of the solid waste which passes through the facility ultimately taken for final disposal.

(D) Curbside satellite collection vehicles used for collecting residential waste, which are small motorized vehicles or equivalent, with bins or containers that once full are deposited into larger solid waste collection vehicles or containers.

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(73) "Twenty-five (25) year, twenty-four (24) hour precipitation event" means the maximum twenty-four (24) hour precipitation event with the probable recurrence interval of once in twenty-five (25) years as defined by the Indiana department of natural resources.

(74) "Vector" means any animal capable of harboring and transmitting micro-organisms from one (1) animal to another or to a human.

(75) "Wash-out" means the carrying away of solid waste by water of the base flood.

(76) "Water course" means the path taken by flowing surface water.

(77) "Water pollution" means:

(A) actual or threatened alteration of the physical, thermal, chemical, biological, bacteriological, or radioactive properties of any waters; or

(B) the discharge or threatened discharge of any contaminant into any water that does or can create a nuisance or render the waters harmful, detrimental, or injurious to:

(i) public health, safety, or welfare;

(ii) domestic, commercial, industrial, agricultural, recreational, or other legitimate uses; or

(iii) livestock, wild animals, birds, fish, or aquatic life.

(78) "Water table" means the upper surface at which the fluid pressure of the ground water is equal to atmospheric pressure.

(79) "Waters" means the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, that are wholly or partially within, flow through, or border upon this state. The term does not include any private pond or any off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

(80) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and, that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(81) "Working face" means that portion of a solid waste land disposal facility where the solid waste is deposited.

(82) "Ash residue" means all solid residue and any entrained liquids resulting from the combustion of solid waste, fossil fuel, or solid waste in combination with fossil fuel at a solid waste incinerator, including:

(A) bottom ash;

(B) boiler ash;

(C) fly ash; or

(D) solid residue of any air pollution control device used at a solid waste incinerator.

(83) "Liquid waste" means any waste material that contains free liquids as determined by Method 9095 (Paint Filter Liquids Test), as described in U.S. Environmental Protection Agency Publication SW-846.

(84) "Municipal solid waste landfill" or "MSWLF" means a solid waste land disposal facility that has received or is permitted to receive household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. An MSWLF is a sanitary landfill for purposes of IC 13-20-21. An MSWLF also may receive commercial solid waste, construction/demolition waste, small quantity generator waste, industrial solid waste, and special waste in accordance with 329 IAC 10-8.1. Such a landfill may be publicly or privately owned.

(85) "Nonmunicipal solid waste landfill" or "non-MSWLF" means a solid waste land disposal facility that has received or is permitted to receive general types of solid waste, excluding municipal solid waste as defined in 329 IAC 10-2-115 and hazardous waste regulated by 329 IAC 3.1, and operated by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with cover material at the end of each working day. A nonmunicipal solid waste landfill is a sanitary landfill for purposes of IC 13-20-21.

(86) "Special waste" has the meaning as set forth in 329 IAC 10-2-179.

(87) "U.S. Environmental Protection Agency Publication SW-846" or "SW-846" means "Test Methods for Evaluating Solid Waste, Physical Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995) and III (December 1996)].

(Solid Waste Management Board; 329 IAC 10-2.5-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1789; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1706, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3771; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 3. Exclusions

329 IAC 10-3-1 Exclusions; general

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-14; IC 13-18-10; IC 13-19-3; IC 13-20; IC 36-9-30

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

- (1) Disposing of only uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.
- (2) Land application activities regulated by 327 IAC 6 and 327 IAC 7.
- (3) Confined feeding control activities regulated by IC 13-18-10.
- (4) Wastewater discharge activities regulated by 327 IAC 5.
- (5) Solid waste management activities regulated by 329 IAC 11.
- (6) Disposal of saw dust which is derived from processing untreated natural wood.
- (7) The disposal of coal ash, transported by water, into an ash pond which has received a water pollution control facility construction permit under 327 IAC 3.
- (8) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivisions (7) and (9).
- (9) The disposal of coal ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.
- (10) Uses and disposal of coal waste as exempted from regulation in IC 13-19-3.
- (11) The legitimate use of iron and steelmaking slags including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).
- (12) The legitimate use of foundry sand which has been demonstrated to the satisfaction of the commissioner as suitable for restricted waste site type III under the provisions of 329 IAC 10-9-4, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).
- (13) Other uses of solid waste may be approved by the commissioner if the commissioner determines them to be legitimate uses that do not pose a threat to public health and environment.

(Solid Waste Management Board; 329 IAC 10-3-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2749; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3771; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-3-2 Exclusion; hazardous waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Hazardous wastes are regulated by and shall be treated, stored, and disposed of in accordance with 329 IAC 3.1. Hazardous waste that is regulated by 329 IAC 3.1 is not subject to the provisions of this article.

(b) No hazardous waste that is regulated by 329 IAC 3.1 shall be disposed at any solid waste land disposal facility regulated under this article.

(c) As used in this article, "hazardous waste that is regulated by 329 IAC 3.1" does not include hazardous waste generated in quantities less than one hundred (100) kilograms per month and is therefore excluded from regulation under the hazardous waste management article, 329 IAC 3.1. Such small quantities of hazardous waste shall be disposed of in accordance with this article.

(d) Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility. *(Solid Waste Management Board; 329 IAC 10-3-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3776; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-3-3 Insignificant facility modifications

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-14; IC 13-18; IC 13-30; IC 36-9-30

Sec. 3. (a) A permittee of a solid waste land disposal facility proposing insignificant facility modifications may not be required

to apply for a minor or a major modification of the current permit from the commissioner. See the definition of insignificant facility modification at 329 IAC 10-2-97.1.

(b) If a permittee proposes or is required to make an insignificant facility modification described in 329 IAC 10-2-97.1(1), 329 IAC 10-2-97.1(2), 329 IAC 10-2-97.1(3), 329 IAC 10-2-97.1(4), 329 IAC 10-2-97.1(5), 329 IAC 10-2-97.1(6), 329 IAC 10-2-97.1(7), 329 IAC 10-2-97.1(8), 329 IAC 10-2-97.1(9), or 329 IAC 10-2-97.1(10), the permittee shall provide notice to the commissioner no later than seven (7) calendar days after the modification has been made. The notice shall include a detailed description of the project and the date the project was or is expected to be completed.

(c) If the permittee proposes to make an insignificant facility modification described in 329 IAC 10-2-97.1(11), 329 IAC 10-2-97.1(12), 329 IAC 10-2-97.1(13), or 329 IAC 10-2-97.1(14), the permittee shall submit documentation of the proposed insignificant facility modifications to the commissioner. The documentation must include a detailed description of the proposed project.

(d) If the commissioner determines that the modification under subsection (c) is a major or minor modification, the permittee will be notified in writing within thirty (30) days after receipt of the information to the commissioner that the permittee must submit an application for a minor or major modification to the current permit.

(e) If the permittee does not receive notification from the commissioner within thirty (30) days after submission of the proposed modifications to the commissioner, the permittee may initiate the insignificant facility modifications in accordance with documentation provided to the commissioner.

(f) No permit modification shall be required for insignificant facility modifications made under this subsection to:

- (1) correct operational violations under this article; or
- (2) protect human health and the environment.

(Solid Waste Management Board; 329 IAC 10-3-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2749; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3776; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-3-4 Exclusion; disposal of wastes that meet restricted waste site Type IV criteria

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Except as provided in this section, the disposal of coal ash residues (including flue gas desulphurization sludge), foundry sands, and other wastes that have been classified by the commissioner to meet the criteria established in 329 IAC 10-9-4 for restricted waste site Type IV waste is not subject to this article.

(b) Restricted waste site Type IV waste must not be disposed of in violation of the prohibitions specified under the following:

- (1) Wetlands in violation of Section 404 of the Clean Water Act.
- (2) The critical habitat of an endangered species as defined by 50 CFR 17.
- (3) Any floodways:
 - (A) with drainage areas greater than one (1) square mile without the approval of the department of natural resources; or
 - (B) without provisions to prevent washout of the waste.
- (4) Within areas of karst topography:
 - (A) without provisions to collect and contain all of the leachate generated; and
 - (B) without a demonstration that the integrity of the area within the solid waste boundary will not be damaged by subsidence.
- (5) Over mines unless it is demonstrated that the integrity of the area within the solid waste boundary will not be damaged by subsidence.
- (6) Within six hundred (600) feet of a potable water well in use as a water supply for a dwelling or dwellings on the date of public notice for zoning approval for the permitted activity or the date of waste classification by the commissioner, whichever occurs first, unless written consent is obtained from the owner of the well.

(c) The disposal of all restricted waste site Type IV waste must meet the disposal control requirements specified under the following:

- (1) If the disposal operation is found to be in violation of fugitive dust regulations of the air pollution control board or if the commissioner documents evidence of visible waste deposits carried by wind or surface water beyond the site property boundary, restricted waste site Type IV must:
 - (A) apply daily cover; and
 - (B) submit a plan to control dispersal.

(2) Application of daily cover must continue until a dispersal control plan is approved by the commissioner.

(d) Restricted waste site Type IV waste must not be disposed into standing water where the standing water reflects the water table. (*Solid Waste Management Board; 329 IAC 10-3-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1796; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3777; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 4. Open Dumping and Open Dumps

329 IAC 10-4-1 Purpose

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-30-2-1; IC 36-9-30-35

Sec. 1. The purpose of this rule is to implement the provisions of the following:

(1) IC 13-30-2-1(3) and IC 13-30-2-1(4) relating to the deposit of contaminants or solid waste upon the land except as permitted in this article.

(2) IC 13-30-2-1(5) and IC 36-9-30-35 prohibiting dumping, causing, or allowing the open dumping of garbage or of other solid waste in violation of this article.

(*Solid Waste Management Board; 329 IAC 10-4-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1796; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2750; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-4-2 Acts prohibited

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. No person shall cause or allow the storage, containment, processing, or disposal of solid waste in a manner which creates a threat to human health or the environment, including the creating of a fire hazard, vector attraction, air or water pollution, or other contamination. (*Solid Waste Management Board; 329 IAC 10-4-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1797; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-4-3 Open dumps prohibited

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-146; IC 13-11-2-147; IC 13-18; IC 36-9-30

Sec. 3. Open dumping and open dumps, as those terms are defined in IC 13-11-2-146 and IC 13-11-2-147, are prohibited. (*Solid Waste Management Board; 329 IAC 10-4-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1797; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2750; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-4-4 Owner responsibilities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-18; IC 13-25-4-7; IC 13-25-4-8; IC 13-30-2; IC 36-9-30

Sec. 4. (a) The owner of real estate upon which an open dump is located is responsible for the following:

(1) Correcting and controlling any nuisance conditions that occur as a result of the open dump. Correction and control of nuisance conditions must include:

(A) removal of all solid waste from the area of the open dump and disposal of such wastes in a solid waste land disposal facility permitted to accept the waste; or

(B) other methods as approved by the commissioner.

(2) Eliminating any threat to human health or the environment.

(b) If the commissioner determines that the open dump is or may be a threat to human health or the environment due to a release of contaminants from the open dump into the environment, the commissioner may proceed under IC 13-25-4 and rules adopted under IC 13-25-4-7 that require the owner of real estate upon which an open dump is located or any other responsible persons under IC 13-25-4-8, to perform remedial action, including the installation and monitoring of ground water monitoring wells

or other devices. (*Solid Waste Management Board; 329 IAC 10-4-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1797; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2750; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3777; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 5. Industrial On-Site Activities Needing Permits

329 IAC 10-5-1 Applicability

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3-1

Affected: IC 13-18; IC 13-25-4; IC 36-9-30

Sec. 1. (a) This rule applies to all industries:

- (1) that dispose of solid waste including special waste on the site where the waste is generated or off-site at a solid waste land disposal facility that is owned and operated by the generator for its exclusive use; and
- (2) that are required to have a permit under this article, but did not have a permit under:
 - (A) 329 IAC 1.5, which was repealed in 1989; or
 - (B) 329 IAC 2, which was repealed in 1996.

(b) To continue on-site disposal after September 1, 1989, industries subject to this rule and operating before September 1, 1989, must have submitted all information required by this section on or before September 1, 1989, to the commissioner. Compliance with section 2 of this rule must constitute an interim permit and must allow the facility to continue operating until such time as the commissioner issues or denies a permit under section 3 of this rule.

(c) This rule does not preclude the commissioner from taking action under IC 13-25-4 where a particular disposal practice is demonstrated to threaten human health or the environment. (*Solid Waste Management Board; 329 IAC 10-5-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1797; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2750; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-5-2 Application requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) All industries operating before the effective date of this rule are subject to this rule and must file a complete application with the commissioner for a permit under this article or submit the following information:

- (1) The name and address of the facility producing the solid waste.
- (2) A description of the process or processes producing the solid waste.
- (3) Information on the total quantity of solid waste produced.
- (4) A description of the appearance of the material, any odor produced by the material, and the susceptibility of the material to wind and water dispersal.
- (5) Information on the chemical and physical characteristics of the solid waste, including the following:
 - (A) Composition.
 - (B) Density.
 - (C) Leachability.
 - (D) Reactivity.
 - (E) Ignitability.
 - (F) Toxicity.
- (6) Information on all known hazards associated with the waste.
- (7) A description of the current method and location of disposal.

(b) The information submitted must be identified as the information necessary to satisfy the requirements of this rule and must be signed as required by 329 IAC 10-11-3. (*Solid Waste Management Board; 329 IAC 10-5-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1797; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-5-3 Action on the application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) The commissioner shall review the information submitted and prioritize permit determinations based upon an assessment of the health and environmental threat posed by the disposal activity. To achieve prioritization the commissioner shall consider the data, or lack of data, regarding the characteristics of the material and the current disposal method.

(b) To the extent practical, the commissioner shall endeavor to process permits for solid waste land disposal facilities that dispose of similar types of solid wastes in the same time period to allow industrial categories to share data collection efforts.

(c) In cases where the commissioner determines that further data is needed to adequately evaluate the disposal activities for the purposes of issuing a permit, the commissioner shall provide written notice of such requirements to the facility and allow a reasonable time period for compliance with requests for additional information. (*Solid Waste Management Board; 329 IAC 10-5-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1798; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 6. Previously Permitted Solid Waste Land Disposal Facilities and Sanitary Landfills Closed Prior to April 14, 1996; Responsibilities

329 IAC 10-6-1 Applicability

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. This rule applies to any previously permitted solid waste land disposal facility or sanitary landfill that closed prior to the repeal of 329 IAC 2 in 1996. (*Solid Waste Management Board; 329 IAC 10-6-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1798; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2750*)

329 IAC 10-6-2 Maintenance, monitoring, or correcting nuisance; permittee responsibilities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) The owner, operator, or permittee of a closed solid waste land disposal facility must continue to monitor and provide maintenance to the solid waste land disposal facility in accordance with the rules under which the permit was granted to the solid waste land disposal facility and in force at the time the solid waste land disposal facility was closed, and in accordance with the facility permit.

(b) The owner, operator, or permittee of a closed solid waste land disposal facility, or the owner of real estate upon which a closed solid waste land disposal facility is located, shall be responsible for correcting and controlling any nuisance conditions occurring at the solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-6-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1798; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778*)

329 IAC 10-6-3 Elimination of threats to human health or the environment

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. The owner, operator, or permittee of a closed solid waste land disposal facility or the owner of real estate on which a closed solid waste land disposal facility is located shall be responsible for eliminating any threat to human health or the environment. (*Solid Waste Management Board; 329 IAC 10-6-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1798; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778*)

329 IAC 10-6-4 Remedial action

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-18; IC 13-25-4-7; IC 13-25-4-8; IC 36-9-30

Sec. 4. If the commissioner determines that the closed solid waste land disposal facility is or may be a threat to human health or the environment, due to a release of contaminants from the solid waste land disposal facility into the environment, the commissioner may proceed under IC 13-25-4 and rules adopted under IC 13-25-4-7 that require the owner, operator, or permittee

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of a closed solid waste land disposal facility or the owner of real estate upon which a closed solid waste land disposal facility is located, or any other responsible person under IC 13-25-4-8, to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices. *(Solid Waste Management Board; 329 IAC 10-6-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1798; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2751; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778)*

Rule 7. Waste Characterization Requirements (Repealed)

(Repealed by Solid Waste Management Board; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733, eff one hundred eighty (180) days after filing with the secretary of state)

Rule 7.1. Waste Determination

329 IAC 10-7.1-1 Purpose

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 36-9-30

Sec. 1. (a) This rule describes how a waste determination must be conducted to determine how a particular waste may be properly:

- (1) disposed of in a municipal solid waste landfill, nonmunicipal solid waste landfill, or restricted waste site; or
- (2) processed in a solid waste processing facility under 329 IAC 11.

(b) The goal of the waste determination process is to acquire enough accurate, reliable, and documented information to determine the most appropriate and environmentally safe way to dispose of that waste in accordance with this article, 329 IAC 11, and 329 IAC 12. (*Solid Waste Management Board; 329 IAC 10-7.1-1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1711, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-7.1-2 Incorporation by reference

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 36-9-30

Sec. 2. (a) The following documents are incorporated by reference:

- (1) "Test Methods for Evaluating Solid Waste, Physical Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996).
- (2) "Methods for Chemical Analysis of Water and Wastes", EPA-600/4-79-020.
- (3) 40 CFR 261, revised as of July 1, 1996, as incorporated by reference at 329 IAC 3.1-6.
- (4) 40 CFR 262, revised as of July 1, 1996, as incorporated by reference at 329 IAC 3.1-7.

(b) Copies of SW-846 and the Code of Federal Regulations (CFR) may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. (*Solid Waste Management Board; 329 IAC 10-7.1-2; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1711, eff one hundred eighty (180) days after filing with the secretary of state*)

329 IAC 10-7.1-3 Waste determination in general

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1

Affected: IC 13-12; IC 13-18-1; IC 13-19

Sec. 3. (a) A generator shall carry out a waste determination to determine the appropriate regulatory status of that waste and to determine other environmental concerns posed by any reasonably anticipated handling, transportation, storage, reuse, processing, or disposal of that waste. A waste determination must be carried out for all solid waste except:

- (1) municipal solid waste;
- (2) coal ash that does not exhibit a property listed in subsection (b)(3) through (b)(6);
- (3) flue gas desulfurization byproducts; and
- (4) special waste that is disposed of outside of Indiana if that waste complies with:
 - (A) all waste determination requirements of the receiving state; and
 - (B) all federal waste determination requirements.

(b) The waste determination process must specifically look for the following in a particular waste:

- (1) Characteristics of hazardous waste described in 40 CFR 261, Subpart C.
- (2) Listing of the waste in 40 CFR 261, Subpart D.
- (3) Asbestos, described in 40 CFR 61 and 40 CFR 763.
- (4) Polychlorinated biphenyls, described in 40 CFR 761 and 329 IAC 4 [329 IAC 4 was repealed filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083. See 329 IAC 4.1.].
- (5) The presence of heat, or the capability of generating heat when combined with other wastes or water, such that the heat

may adversely affect:

- (A) routine solid waste disposal operations;
- (B) the structure of the solid waste land disposal facility; or
- (C) the health or safety of workers or the public.

(6) Other significant risks that the particular waste may present in any reasonably anticipated handling, transportation, storage, processing, or reuse of that waste.

(c) It is the generator's responsibility to identify, obtain or develop, and document all information necessary to determine the correct regulatory status of the waste as described in 329 IAC 10-2-199.1. This information may include the following:

- (1) Generator knowledge of the characteristics of the waste considering the materials or the processes used.
- (2) Information developed through testing the waste in accordance with the methods listed in section 4 of this rule.
- (3) Documentation as specified in section 5 of this rule.

(d) Generators must comply with any applicable requirements of section 5(c) of this rule for waste streams that contain polychlorinated biphenyls.

(e) Waste streams must not be combined for a waste determination. (*Solid Waste Management Board; 329 IAC 10-7.1-3; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1712, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3366; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3779; filed Sep 10, 1999, 9:24 a.m.: 23 IR 7; errata filed Oct 8, 1999, 1:20 p.m.: 23 IR 344*)

329 IAC 10-7.1-4 Waste testing

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 36-9-30

Sec. 4. (a) If the information available to the generator, prior to testing the waste, is insufficient for a waste determination, the waste must be tested using the methods listed in Table 1 in subsection (h) or Table 2 in subsection (i) that are appropriate to that waste.

(b) The commissioner may require additional testing of a particular waste if:

- (1) the information available prior to testing is insufficient for a waste determination; or
- (2) the waste presents risks and hazards beyond the scope of the waste determination.

(c) The commissioner may require testing for additional contaminants:

- (1) if indicated by the hazards presented by the waste; or
- (2) if disposal of the waste at a particular solid waste land disposal facility presents risks and hazards not considered in the waste determination.

(d) The additional contaminants the commissioner may require testing for under subsection (c) may include the following:

- (1) Metals not regulated by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.
- (2) Chlorides.
- (3) Sulfides.
- (4) Phenols.
- (5) Other contaminants that present a risk to human health or the environment.

(e) The commissioner may accept additional or alternate testing methods if the test methods provide an equivalent level of accuracy and reliability.

(f) Waste testing must comply with the applicable quality assurance and quality control procedures in SW-846, Chapter 1, "Quality Control".

(g) For the purposes of classifying a waste in accordance with 329 IAC 10-9, the statistical sampling methodology specified in Volume II, Chapter 9, "Sampling Plan" of SW-846 must be used to determine the upper confidence limit for each constituent concentration value.

(h) Table 1, as follows, lists the appropriate testing requirements for special waste that will be disposed of in a municipal solid waste landfill or a nonmunicipal solid waste landfill:

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Table 1. Testing Requirements for Waste to be Disposed of in an MSWLF or Non-MSWLF

Constituent or Hazardous Characteristic to be Tested for	Required Test Method	Required Modifications to Test Method
Ignitability: - flash point - spontaneous heating or combustion	Liquid: Method 1010 (Pensky-Martens Closed-Cup Method) ¹ Method 1020A (Seta-flash Closed-Cup Method) Not a liquid: See 40 CFR 261.21(a)(2) Flammable gas: See 49 CFR 173.115(a) Oxidizer: See 49 CFR 173.127	None
Corrosivity (pH)	Method 9040 (pH Electrometer Measurement) ¹ Method 1110 (Corrosivity Toward Steel) ¹	None
Reactivity	See 40 CFR 261.23	None
Toxicity: see 40 CFR 261.24, Table 1 for list of constituents	Method 1311 (Toxicity Characteristic Leaching Procedure) ¹	IDEM may require testing for additional constituents if necessary
Asbestos	“Interim Method of the Determination of Asbestos in Bulk Insulation Samples” (Polarized Light Microscopy), 40 CFR 763, Subpart E, Appendix E ³	None
Polychlorinated biphenyls (PCBs)	Method 8080A (Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography) Method 8081 (Organochlorine Pesticides and PCBs as Arochlors by Gas Chromatography: Capillary Column Technique) ^{1,2}	None
Liquid wastes or free liquids in wastes	Method 9095 (Paint Filter Liquids Test) ¹	None
Other constituents required to be tested by the commissioner, due to hazards presented by the waste and the disposal site	Appropriate tests from SW-846 ^{1,2} See 40 CFR 261, Subpart C and SW-846 ¹ for the full range of appropriate tests that should be considered for each waste	Tests may be modified as needed

¹ Test methods and procedures are found in SW-846, unless otherwise noted.

² The generator should select an appropriate test or tests based on the type of waste to be characterized. OSHWM staff will assist a generator in selecting appropriate test methods, if required.

³ This test was moved from 40 CFR 763, Subpart F, Appendix A. See 60 FR 31922, June 19, 1995.

(i) Table 2, as follows, lists testing requirements for wastes that will be disposed of in a restricted waste site in accordance with 329 IAC 10-9, in addition to the determination required under Table 1:

[See following page for Table.]

Table 2. Testing Requirements for Waste to be Disposed of in a Restricted Waste Site

Waste	Required Extraction Method	Constituents to Analyze for	Analytical Methods
Coal Ash or Flue Gas Desulfurization Byproducts	Method 1311 (Toxicity Characteristic Leaching Procedure) ¹ , or Method 1310A (Extraction Procedure Toxicity Test) ¹ (this optional method may be used instead of Method 1311 until April 13, 1998)	Arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver	Appropriate methods from SW-846 or EPA 600/4-77-020; or other methods approved by the commissioner
	Neutral Leaching Method (use deionized water instead of Method 1311 extraction fluids 1 or 2. pH must be analyzed at the end of the 18 hour extraction period); or Method 1312 (Synthetic Precipitation Leaching Procedure) ¹	Barium, chlorides, total cyanide, fluoride, pH, sodium, sulfate, total sulfide, total dissolved solids	
Foundry Waste	Method 1311 (Toxicity Characteristic Leaching Procedure) ¹	Arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver	Appropriate methods from SW-846 or EPA 600/4-77-020; or other methods approved by the commissioner
	Neutral Leaching Method (use deionized water instead of Method 1311 extraction fluids 1 or 2. pH must be analyzed at the end of the 18 hour extraction period); or Method 1312 (Synthetic Precipitation Leaching Procedure) ¹	Chlorides, copper, total cyanide, fluoride, iron, manganese, nickel, phenols, pH, sodium, sulfate, total sulfide, total dissolved solids, zinc	
All Other Waste	Specific test methods will be determined by the commissioner based on the specific waste	Constituents will be determined based on the specific waste	Appropriate methods from SW-846 or EPA 600/4-77-020; or other methods approved by the commissioner

¹ Methods and procedures are found in SW-846, unless otherwise noted.

(Solid Waste Management Board; 329 IAC 10-7.1-4; filed Jan 9, 1998, 21 IR 1712, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3366; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3779)

329 IAC 10-7.1-5 Documentation of waste determination

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
 Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 36-9-30

Sec. 5. (a) The generator shall document the information used to make a waste determination, listed in section 3(d) of this rule, sufficiently to:

- (1) support all decisions regarding that waste;
- (2) allow the receiving solid waste land disposal facility to comply with 329 IAC 10-8.1; and
- (3) allow the commissioner to review any information, decisions, and activities regarding that waste.

(b) The generator shall provide the information used to make the waste determination to the following:

- (1) The receiving solid waste land disposal facility or solid waste processing facility to allow them to comply with all applicable requirements in 329 IAC 10-8.1.
- (2) The commissioner upon request.

(c) For purposes of determining the regulatory status and disposal requirements of waste contaminated with polychlorinated biphenyls, the concentration of polychlorinated biphenyls in that waste must be determined and documented as follows:

- (1) For wastes resulting from the spill or release of fluid containing polychlorinated biphenyls, such as dielectric fluid, the

concentration of polychlorinated biphenyls must be determined in the source fluid.

(2) For other waste, or for waste in which the contaminating fluid is unknown or cannot be determined independently of the waste, the concentration of polychlorinated biphenyls must be determined in the waste material.

(Solid Waste Management Board; 329 IAC 10-7.1-5; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1714, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3781)

Rule 8. Special Waste (Repealed)

(Repealed by Solid Waste Management Board; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733, eff one hundred eighty (180) days after filing with the secretary of state)

Rule 8.1. Special Waste Management and Disposal at Municipal Solid Waste Landfills, Nonmunicipal Solid Waste Landfills, and Restricted Waste Landfills

329 IAC 10-8.1-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 1. (a) After the effective date of this rule, no person may cause or allow special waste to be:

- (1) disposed of in a municipal solid waste landfill, nonmunicipal solid waste landfill, or restricted waste site; or
- (2) processed in a solid waste processing facility under 329 IAC 11;

except as provided in this rule, 329 IAC 10-5, 329 IAC 10-7.1, 329 IAC 10-9, and 329 IAC 11.

(b) All generators of special waste are required to comply with the waste determination requirements specified in 40 CFR 262.11, 40 CFR 262.40, and all other applicable federal waste determination requirements. *(Solid Waste Management Board; 329 IAC 10-8.1-1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1715, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-8.1-2 Transition

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6

Sec. 2. (a) If a certification was issued to a generator under 329 IAC 10-8-6, that was repealed in 1997, the certification remains effective until the original expiration date.

(b) The commissioner may grant a site-specific approval allowing an MSWLF unit or non-MSWLF unit to accept certain special wastes if the MSWLF unit or non-MSWLF unit permittee submits an application requesting a minor modification of the MSWLF's or non-MSWLF's permit to allow acceptance of certain wastes. *(Solid Waste Management Board; 329 IAC 10-8.1-2; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1715, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3781; filed Sep 10, 1999, 9:24 a.m.: 23 IR 8; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-8.1-3 General requirements for special waste management

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6

Sec. 3. (a) A generator of waste other than municipal solid waste or coal ash or flue gas desulfurization byproducts shall do the following:

- (1) Carry out a waste determination for a particular waste in accordance with 40 CFR 262.11 and 329 IAC 10-7.1.
- (2) Document that waste determination in accordance with 329 IAC 10-7.1-5.
- (3) Comply with the requirements of this section.

(b) If the waste is a hazardous waste as defined in 40 CFR 261, the generator shall manage the waste in accordance with 329 IAC 3.1.

(c) If the waste is a special waste as defined in 329 IAC 10-2-179, the generator shall do the following:

- (1) Determine the category of the special waste using Table 1 of section 4 of this rule.
- (2) Manage the waste in accordance with the requirements in Table 2 of section 6 of this rule.
- (3) Comply with any applicable special management requirements in section 12 of this rule.
- (d) The following special wastes are subject to special management requirements in section 12 of this rule:
 - (1) Wastes that generate fugitive dusts.
 - (2) Wastes that are hot or are capable of generating heat as described in section 12(c) of this rule.
 - (3) Regulated asbestos-containing materials, except Category I nonfriable asbestos-containing materials, or special wastes that

are contaminated with asbestos.

(4) Wastes that contain polychlorinated biphenyls at a concentration of equal to or greater than two (2) parts per million but less than fifty (50) parts per million.

(5) Wastes that are or contain pesticides that are regulated under the federal Insecticide, Fungicide, and Rodenticide Act at 7 U.S.C. 136 et seq.

(6) A listed hazardous waste that has been delisted in accordance with 40 CFR 260.22 or 329 IAC 3.1-5-2.

(7) Any other waste determined by the commissioner to require special handling or disposal requirements.

(e) If the waste is disposed of in a restricted waste site, the generator shall manage the waste in accordance with 329 IAC 10-9.

(f) If the waste is disposed of in a facility that disposes of hazardous waste and is permitted under 329 IAC 3.1, the generator may dispose of the waste without special waste verification or certification.

(g) If the waste is a liquid waste or contains free liquids, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall comply with the requirements of 329 IAC 10-9-2 and 329 IAC 10-20-27.

(h) After making the waste determination required by 329 IAC 10-7.1, a generator may mix a special waste with another special waste or with a solid waste in accordance with the following:

(1) Any mixed wastes must comply with all applicable management practices for each waste within the mixture as follows:

(A) Special conditions under section 10(e)(5) of this rule.

(B) Special wastes having special management requirements under section 12 of this rule.

(C) Petroleum-contaminated spill waste under section 13 of this rule.

(2) Notify the owner, operator, or permittee of the receiving MSWLF unit or non-MSWLF unit of the contents of the highest category of special waste in the mixture as described in Table 1 of section 4 of this rule.

(i) The generator shall provide the information used to document the waste determination:

(1) to the owner, operator, or permittee of the receiving MSWLF unit or non-MSWLF unit; and

(2) to the commissioner when required.

(j) Wastes contaminated with polychlorinated biphenyls at a concentration equal to or greater than fifty parts per million (50 ppm) must be managed in accordance with applicable requirements of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., 40 CFR 761 and 329 IAC 4.

(k) An empty container is not a special waste if the container meets the following requirements:

(1) A container that held a hazardous waste must meet the requirements for empty containers in 40 CFR 261.7, incorporated by reference at 329 IAC 10-7.1-2.

(2) A container that held an agricultural chemical regulated under the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., must be triple rinsed.

(3) A container that held another material that does not meet the criteria of subdivision (1) or (2) must have the material or residue removed from the container so that:

(A) the container is not hazardous to any person who may come in contact with it through handling, transportation, or disposal; and

(B) the material or residue removed from the container is handled and disposed of in compliance with all applicable requirements of this article or 329 IAC 3.1.

(Solid Waste Management Board; 329 IAC 10-8.1-3; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1715, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3781; filed Sep 10, 1999, 9:24 a.m.: 23 IR 8; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-8.1-4 Special waste categories

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 4. (a) Special waste is divided into the following categories:

Table 1. Special Waste Categories

Category A	<p>A Category A special waste is a special waste that meets one (1) or more of the following criteria:</p> <p>(1) The waste contains a toxicity characteristic contaminant listed in 40 CFR 261.24, Table 1, at a level equal to or greater than seventy-five percent (75%) of the regulatory level for that contaminant.</p> <p>(2) The waste exhibits a hazardous characteristic as described in 40 CFR 261 and has been rendered nonhazardous in accordance with 40 CFR 261.3(d)(1) and 40 CFR 268.9(d).</p> <p>(3) The waste is assigned as a Category A special waste by the commissioner.</p>
Category B	<p>A Category B special waste is a special waste that meets one (1) of the following criteria:</p> <p>(1) The waste is not a Category A special waste.</p> <p>(2) The waste is assigned as a Category B special waste by the commissioner.</p>

(b) If a generator of a Category A special waste, except a hazardous waste that has been rendered nonhazardous in accordance with 40 CFR 261.3(d)(1) and 40 CFR 268.9(d), can demonstrate through:

- (1) repeated analysis; and
- (2) statistical evaluation;

that the waste exhibits sufficient consistency to assure the commissioner that the waste can reasonably be expected to never be a hazardous waste, the commissioner may assign that waste as a Category B special waste.

(c) If the commissioner receives information that a Category B special waste does not meet the criteria for a Category B special waste, the commissioner may, after review of the documentation supporting the waste determination for that waste, assign that waste as a Category A special waste. *(Solid Waste Management Board; 329 IAC 10-8.1-4; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1716, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-8.1-5 Solid waste land disposal facilities for special waste disposal

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 5. (a) Special waste must be disposed of in one of the solid waste land disposal facilities listed in this section, in accordance with the requirements listed in this section for each type of solid waste land disposal facility.

(b) Special waste may be disposed of in a municipal solid waste landfill or a nonmunicipal solid waste landfill in Indiana in accordance with the requirements listed for disposal of each category of waste in Table 2 of section 6 of this rule.

(c) Special waste may be disposed of in a restricted waste site by complying with all of the following:

- (1) The classification requirements of 329 IAC 10-9.
- (2) All other applicable rules under this article.
- (3) The conditions of the restricted waste site's permit.

(d) Special waste may be disposed of in a facility that disposes of hazardous waste and is permitted under 329 IAC 3.1 without prior special waste certification or special waste verification.

(e) Special waste may be disposed of in a solid waste land disposal facility in another state if the generator complies with one (1) of the following:

- (1) All requirements of the receiving state for that waste.
- (2) All requirements of this rule for that waste.

(f) Special waste may be delivered to a solid waste processing facility that is permitted to receive special waste if it is managed in accordance with 329 IAC 11-7.

(g) Special waste must not be disposed of in an MSWLF or non-MSWLF if that solid waste land disposal facility's authority to accept special waste has been revoked or denied by the commissioner.

(h) The commissioner may evaluate any MSWLF unit or non-MSWLF unit to determine the continued acceptability of that unit as a site for special waste disposal based on the following criteria:

- (1) Operational history as documented by:
 - (A) inspection reports;
 - (B) record keeping and report submittal; and
 - (C) disposal notifications.
- (2) Training of site personnel for proper special waste handling and disposal.
- (3) Appropriate handling of special waste.
- (4) Compliance with all applicable requirements of this article.
- (5) Construction of that unit to accommodate disposal of special waste.
- (6) Existence of a valid permit under:
 - (A) this article;
 - (B) 329 IAC 2, which was repealed in 1996; or
 - (C) 329 IAC 1.5, which was repealed in 1989.

(i) The commissioner may take any of the following actions based on an evaluation made under subsection (h):

- (1) Allow the MSWLF or non-MSWLF to continue to accept special waste for disposal at the MSWLF unit or non-MSWLF unit under evaluation in subsection (h).
- (2) Revoke the authority of the MSWLF or non-MSWLF to accept one (1) or more categories of special waste for disposal at the MSWLF unit or non-MSWLF unit under evaluation in subsection (h).
- (3) Authorize the MSWLF or non-MSWLF to accept special waste only as approved by the commissioner under section 2(c) of this rule.

(Solid Waste Management Board; 329 IAC 10-8.1-5; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1717, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3366; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3782; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-8.1-6 Special waste disposal requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 6. Table 2 as follows lists the requirements that must be met to properly dispose of each category of special waste in a MSWLF unit or non-MSWLF unit:

Table 2. Requirements for Disposal of Special Waste

Category of Special Waste	Requirements for disposal in a MSWLF unit or non-MSWLF unit that: (1) meets or exceeds the design, construction, and operating standards of 40 CFR 258; and (2) is permitted under this article or under 329 IAC 2, that was repealed in 1996.	Requirements for disposal in a MSWLF unit or non-MSWLF unit that does not meet the design, construction, and operating standards of 40 CFR 258.
Category A	(1) A generator of a Category A special waste shall comply with: (A) section 9 of this rule; (B) any applicable special management requirements in section 12 of this rule; and (C) any conditions issued with the waste certification that are applicable to the generator. (2) The owner, operator, or permittee of a MSWLF unit or non-MSWLF unit that receives Category A special waste shall comply with: (A) section 11 of this rule; (B) any applicable special management requirements in section 12 of this rule; (C) section 13 of this rule; and (D) any conditions issued with the waste certification that are applicable to the MSWLF unit or non-MSWLF unit.	(1) A generator of a Category A special waste shall comply with: (A) section 9 of this rule; (B) any applicable special management requirements in section 12 of this rule; and (C) any conditions issued with the waste certification that are applicable to the generator. (2) The owner, operator, or permittee of a MSWLF unit or non-MSWLF unit that receives Category A special waste shall comply with: (A) section 11 of this rule; (B) any applicable special management requirements in section 12 of this rule; (C) section 13 of this rule; and (D) any conditions issued with the waste certification that are applicable to the MSWLF unit or non-MSWLF unit.
Category B	(1) A generator of a Category B special waste shall comply with: (A) section 7 of this rule; and (B) any applicable special management requirements in section 12 of this rule. (2) The owner, operator, or permittee of a MSWLF unit or non-MSWLF unit that receives Category B special waste shall comply with: (A) section 8 of this rule; (B) any applicable special management requirements in section 12 of this rule; and (C) section 13 of this rule.	(1) A generator of a Category B special waste shall comply with: (A) section 9 of this rule; (B) any applicable special management requirements in section 12 of this rule; and (C) any conditions issued with the waste certification that are applicable to the generator. (2) The owner, operator, or permittee of a MSWLF unit or non-MSWLF unit that receives Category B special waste shall comply with: (A) section 11 of this rule; (B) any applicable special management requirements in section 12 of this rule; (C) section 13 of this rule; and (D) any conditions issued with the waste certification that are applicable to the MSWLF unit or non-MSWLF unit.

(Solid Waste Management Board; 329 IAC 10-8.1-6; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1717, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3366; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-8.1-7 Special waste verification process; generator responsibilities; exceptions

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6

Sec. 7. (a) If required in Table 2 of section 6 of this rule, a special waste generator shall comply with the requirements of this section, except as provided in subsection (b).

(b) A generator of RACM that does not result from the manufacture or grinding of asbestos-containing products is not required to comply with this section. A generator of RACM that does not result from the manufacture or grinding of asbestos-containing products shall comply with the special management requirements for RACM in section 12(d) and 12(e) of this rule.

(c) Prior to the initial disposal of a waste, a generator shall submit a request for a special waste verification notice to the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit in which the generator intends to dispose of the special waste. The request for a special waste verification notice must include the following:

- (1) The generator's business name, complete facility address for location of generation, mailing address, and telephone number.
- (2) A description of the process and raw materials that generate the waste or wastes.
- (3) Identification and a description of the waste or wastes for which the notice is requested.
- (4) A statement certifying the truth and accuracy of the information contained in the notice.
- (5) The documentation, for each waste, used to make the waste determination for that waste required by 329 IAC 10-7.1, demonstrating the following:
 - (A) The waste is a special waste as defined in 329 IAC 10-2-179.
 - (B) The waste does or does not meet any of the criteria for special management requirements in section 12 of this rule.
 - (C) The waste is not a hazardous waste that is regulated under 329 IAC 3.1.

(6) The special waste category.

(7) Any assignment of a special waste to a category by the commissioner under section 4(b) through 4(c) of this rule.

(d) If a change occurs in a significant raw material or process involved in generating a special waste that requires verification and that change may alter the category to which the waste is assigned under Table 1 of section 4 of this rule or the regulatory status of the waste as described in 329 IAC 10-2-199.1, the generator shall do the following:

- (1) Repeat the waste determination.
- (2) Advise the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit of the change using one (1) of the statements in subsection (f).
- (3) Do one (1) of the following, as applicable:
 - (A) Submit a new request for a special waste verification notice of the change has lead to a change in regulatory status as described in 329 IAC 10-2-199.1.
 - (B) Follow the certification process in section 9 of this rule.

(e) At the time of shipment of special waste, the generator shall provide a disposal notification for each shipment of special waste to the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit that includes the following information:

- (1) The generator's business name, complete facility address for location of generation, and telephone number.
- (2) The identification of waste material.
- (3) A signed statement attesting that the information supplied on the disposal notification is true and accurate. An original signature must appear on the disposal notification for the first load of a waste. The signature on disposal notifications for subsequent loads of the same waste may be photocopied; however, those photocopied signatures will be considered to have the same authority as the original signature.

(f) The disposal notification for subsequent shipments of special waste shall include one (1) of the following statements, whichever is applicable:

- (1) "No changes have been made to any relevant raw material or to the waste generating process since the last shipment of the waste."
- (2) "The following change to a relevant raw material or to the waste generating process has occurred since the last shipment of the waste: [describe the change]. I have determined that the change could not have led to a change in regulatory status, and I did not repeat the waste determination for this waste."
- (3) "The following change to a relevant raw material or to the waste generating process has occurred since the last shipment of the waste: [describe the change]. I have repeated the waste determination and have determined that this change did not cause a change in regulatory status."
- (4) "The following change to a relevant raw material or to the waste generating process has occurred since the last shipment of the waste: [describe the change]. I have repeated the waste determination and have determined that this change caused a

change in the regulatory status of the waste. I have received from the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit an updated verification notice that reflects the change in regulatory status.”

(Solid Waste Management Board; 329 IAC 10-8.1-7; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1719, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3367; filed Sep 10, 1999, 9:24 a.m.: 23 IR 9; errata filed Oct 8, 1999, 1:20 p.m.: 23 IR 344; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-8.1-8 Special waste verification process; MSWLF unit or non-MSWLF unit owner, operator, or permittee responsibilities

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6

Sec. 8. (a) If required in Table 2 of section 6 of this rule, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit may accept that waste if the following conditions have been met:

(1) The generator has submitted a request for a special waste verification notice, including all documentation required to support the request, as required by section 3(i) of this rule.

(2) The owner, operator, or permittee of the MSWLF unit or non-MSWLF unit has reviewed the generator’s documentation in accordance with subsection (b) and has provided the generator with a special waste verification notice.

(b) Upon receipt of a generator’s request for a special waste verification notice, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall review the accompanying documentation to determine whether the waste is suitable for disposal at that MSWLF unit or non-MSWLF unit. After completion of the review, the owner, operator, or permittee shall do one (1) of the following:

(1) If the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit determines the waste is suitable for disposal at the MSWLF unit or non-MSWLF unit, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall prepare and submit:

(A) a special waste verification notice as described under subsection (c) to the generator; and

(B) one (1) of the following to the commissioner with the quarterly report:

(i) A copy of the verification notice submitted to the generator.

(ii) A summary report containing the generator’s name, generating facility location, and the name of the waste stream or streams.

(2) If the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit determines the waste is not suitable for disposal at the MSWLF unit or non-MSWLF unit, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall prepare and submit a notice of nonacceptance as described under subsection (d) to the generator, and to the commissioner no more than twenty-four (24) hours after delivery of the notice of nonacceptance to the generator.

(c) The special waste verification notice is a document, signed by the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit, that includes the following:

(1) The generator’s business name, location of generation, address, and telephone number.

(2) A statement verifying that the MSWLF unit or non-MSWLF unit meets or exceeds the design, construction, and operating standards promulgated under 40 CFR 258 and is permitted as part of an MSWLF or non-MSWLF permitted under this article or 329 IAC 2, which was repealed in 1996.

(3) The following information for each waste approved for disposal:

(A) Identification of the waste.

(B) Verification of the category of the waste.

(C) This statement: “Based on the information provided by the generator, the waste described in the documentation accompanying this request for verification is a special waste as defined in 329 IAC 10-2-179. This waste is not a hazardous waste as described in 40 CFR 261, nor is it any other type of unauthorized waste.”

(d) A notice of nonacceptance is a document, signed by the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit, that includes the following:

(1) The generator’s business name, complete facility address for location of generation, address, and telephone number.

(2) For each waste for which disposal is denied, the following:

(A) Identification of the waste.

(B) A statement that the request for a special waste verification is denied.

(C) A statement describing the reason for denying the request under this rule.

(e) At the time of delivery of a load of special waste, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall confirm, as accurately as possible through a visual inspection of each load, each of the following:

(1) The special waste appears to conform with the disposal notification prepared by the generator in accordance with section 6(e)(1) of this rule.

(2) The special waste appears to conform with the documentation that accompanied the generator’s request for a verification

notice described under section 6(b) of this rule.

(f) Where applicable, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall ensure that the special waste accepted for disposal complies with any site-specific or waste-specific approvals. (*Solid Waste Management Board; 329 IAC 10-8.1-8; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1719, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3783; filed Sep 10, 1999, 9:24 a.m.: 23 IR 10; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-8.1-9 Special waste certification process; generator responsibilities

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-2; IC 13-20-7-6; IC 13-20-21-5; IC 36-9-30

Sec. 9. (a) If required in Table 2 of section 6 of this rule, a special waste generator shall comply with the requirements of this section.

(b) Prior to the initial shipment of a special waste for disposal, the generator shall do the following:

(1) Submit an application for special waste certification to the commissioner in accordance with this section.

(2) Obtain a special waste certification for the waste or wastes from the commissioner.

(3) Provide the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit with a copy of the special waste certification.

(c) An application for special waste certification must be submitted to the commissioner on the "Special Waste Certification Application" form provided by the commissioner. A separate application must be submitted to the commissioner for each waste stream or each combination of waste streams requiring a certification.

(d) The following shall be submitted with the application form:

(1) The generator fee required by IC 13-20-21-5.

(2) The documentation required by 329 IAC 10-7.1 for each waste that is used to make the waste determination for that waste.

(e) The commissioner may require testing if the information provided is insufficient to make a waste determination or to properly characterize or evaluate the environmental threat posed by the waste.

(f) If waste testing is required, waste analyses submitted to the commissioner for review must be accompanied by sufficient documentation of representative sampling and quality assurance and quality control measures to establish that applicable procedures were conducted in accordance with the requirements of 329 IAC 10-7.1, 329 IAC 3.1-6, 40 CFR 261, 40 CFR 262, and U.S. Environmental Protection Agency Publication SW-846.

(g) At the time of disposal, the generator shall provide the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit with a written disposal notification with each load of special waste. The disposal notification must include the following:

(1) The generator's business name, complete facility address for location of generation, and telephone number.

(2) The identification of waste material.

(3) The certification number assigned to the special waste by the commissioner.

(4) A signed statement that the information provided on the disposal notification is true and accurate.

(h) A generator may combine waste streams for certification as provided for in IC 13-20-7-2.

(i) If there is a change to the process or relevant raw materials involved in generating a special waste that requires certification, such that the waste's characteristics are altered, the generator shall:

(1) cease shipment of the waste for disposal;

(2) notify the commissioner of the change by the end of the next business day; and

(3) not resume shipment of the waste for disposal except where disposal is in accordance with the commissioner's determination made under this section.

Based on the information provided by the generator, the commissioner will determine if the change will require the waste to be recertified.

(j) The generator shall comply with all conditions specified in the special waste certification that apply to the waste generator. (*Solid Waste Management Board; 329 IAC 10-8.1-9; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1720, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3367; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-8.1-10 Commissioner's action on an application for special waste certification

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-15; IC 13-18-1; IC 13-19; IC 13-20-7; IC 36-9-30

Sec. 10. (a) Upon receipt of an application for special waste certification, the commissioner shall:

(1) review the application to determine whether the information submitted satisfies the requirements of section 9 of this rule; and

(2) advise the generator if additional information must be submitted to complete the application.

- (b) The commissioner will approve or deny a completed application for special waste certification in accordance with IC 13-15.
- (c) If the information submitted by the generator shows that the waste proposed for certification is a hazardous waste regulated under 329 IAC 3.1, the request for certification will be denied and the waste must be managed in accordance with 329 IAC 3.1.
- (d) If the information submitted by the generator shows that:
 - (1) the waste is a special waste as defined under 329 IAC 10-2-179;
 - (2) the physical, chemical, and variability characteristics of the waste are established in accordance with 329 IAC 10-7.1 and SW-846;
 - (3) disposal of the waste will not significantly impact the environment or adversely affect routine solid waste disposal operations; and
 - (4) the MSWLF unit receiving the special waste within the intended solid waste land disposal facility meets the criteria in section 5(e) of this rule for disposal of the special waste or wastes;
 the commissioner shall certify the waste as a special waste.

(e) To certify a special waste, the commissioner shall provide to the generator a letter of certification for the special waste, that specifies the following:

- (1) The generator's identification, complete facility address for location of generation, and waste certification number.
- (2) The identification of the waste that has been certified.
- (3) The anticipated volume or weight and frequency of disposal.
- (4) The solid waste land disposal facility receiving the waste, when applicable.
- (5) Any handling, transportation, or disposal conditions that are necessary to minimize any adverse health, safety, nuisance, or environmental impact of the waste.
- (6) The expiration date of the certification and the period of time for which the certification will be valid.
- (f) The terms of special waste certification are described in IC 13-20-7.
- (g) The commissioner may revoke a special waste certification if one (1) of the following occurs:
 - (1) The generator fails to comply with any conditions of the certification.
 - (2) The characteristics of the special waste are found to be significantly different from those demonstrated when the certification was granted.
 - (3) The information provided to obtain the certification is found to be false or inaccurate.
 - (4) The disposal practices are determined to be a threat to the public health or the environment.
 - (5) A change occurs in one (1) of the following that results in a change in the regulatory status of the waste as described in 329 IAC 10-2-199.1:
 - (A) A waste generating process.
 - (B) Significant raw materials involved in generating a special waste.
- (h) To revoke a special waste certification, the commissioner shall:
 - (1) notify the generator in writing that the certification has been revoked; and
 - (2) state the reasons for revoking the certification.
- (i) If a special waste certification is revoked as a result of subsection (g)(5), the commissioner may recertify the waste upon receipt of an updated application for certification.
- (j) If the composition of the constituents of a solid waste stream that has been certified as special waste are significantly altered, the solid waste stream must be recertified as special waste, as required by IC 13-20-7-5. (*Solid Waste Management Board; 329 IAC 10-8.1-10; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1721, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3367; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3784; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-8.1-11 Special waste certification procedure; MSWLF unit or non-MSWLF unit owner, operator, or permittee responsibilities

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
 Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

- Sec. 11. (a) If required in Table 2 of section 6 of this rule, an owner, operator, or permittee of a permitted MSWLF unit or permitted non-MSWLF unit shall accept the special waste in accordance with the requirements of this section.
- (b) Prior to accepting the initial load of a special waste from a generator, the owner, operator, or permittee of a MSWLF unit or non-MSWLF unit shall ensure that a copy of the generator's special waste certification has been received from the generator.
 - (c) At the time of waste delivery, the owner, operator, or permittee of a MSWLF unit or non-MSWLF unit shall confirm, as accurately as possible through a visual inspection of each load, the following:
 - (1) The special waste appears to conform with the disposal notification provided by the generator.
 - (2) The special waste appears to conform with information on the special waste certification provided by the generator prior to the initial shipment of the waste.

(d) The owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall ensure, where applicable, that a special waste accepted for disposal complies with any site-specific or waste-specific approvals. (*Solid Waste Management Board; 329 IAC 10-8.1-11; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1722, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-8.1-12 Special wastes having special management requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1

Affected: IC 13-11-2-155; IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6

Sec. 12. (a) This section describes certain special waste that must be managed using the special handling or disposal requirements described in this section.

(b) Waste that generates fugitive dusts or fugitive particulate matter must be managed to comply with the following:

(1) 326 IAC 6-4 for fugitive dust.

(2) 326 IAC 6-5 for fugitive particulate matter, including 326 IAC 6-5-4(g) for control measures for solid waste handling.

(c) Waste that is hot, or capable of generating heat upon combination with other wastes or water, such that the heat may adversely affect routine solid waste disposal operations or may adversely affect the structure of the MSWLF unit or non-MSWLF unit, must be managed in accordance with the following, as applicable:

(1) The waste must be cooled or allowed to cool to a temperature that will not adversely affect routine solid waste disposal operations or adversely affect the structure of the MSWLF unit or non-MSWLF unit, prior to shipment for disposal.

(2) The waste must be treated to prevent any exothermic reaction that may adversely affect:

(A) routine solid waste disposal operations;

(B) the structure of the MSWLF unit or non-MSWLF unit; or

(C) the health or safety of workers or the public.

(3) The waste must be isolated to prevent contact with another waste or with water if such contact may adversely affect:

(A) routine solid waste disposal operations;

(B) the structure of the MSWLF unit or non-MSWLF unit; or

(C) the health or safety of workers or the public.

(d) Regulated asbestos-containing materials, except for Category II nonfriable asbestos-containing materials regulated under subsection (e), must be managed in accordance with 326 IAC 14-10, 40 CFR 61, Subpart M, and the following:

(1) The generator shall provide the solid waste land disposal facility with sufficient notice in advance of the disposal such that the facility may prepare to accept the regulated asbestos-containing material.

(2) All RACM must be handled in accordance with the wetting, packaging, and labeling provisions of 40 CFR 61.145(c) and 40 CFR 61.150(a).

(3) Each load of regulated asbestos-containing material must be accompanied by a waste shipment record prepared on one (1) of the following:

(A) A form provided by the department.

(B) A form produced by the generator that includes all the information included on the form provided by the department.

(4) All regulated asbestos-containing material must be disposed of in accordance with the provisions of 40 CFR 61.154, 326 IAC 14-10, and the following:

(A) There must not be direct physical contact between regulated asbestos-containing material and heavy equipment during disposal and covering operations.

(B) All regulated asbestos-containing material must be covered with soil, approved alternative material, or solid waste before compaction with heavy equipment or within twenty-four (24) hours of receipt of the waste to prevent airborne release.

(C) Any regulated asbestos-containing material that is improperly packaged or in which packaging has been damaged must be placed in the working face of the MSWLF unit or non-MSWLF unit and covered immediately after placement of the waste.

(D) An asbestos disposal manager shall be present at the MSWLF unit or non-MSWLF unit during all regulated asbestos-containing material handling and disposal activities to ensure compliance with this subsection. The on-site asbestos disposal manager shall be accredited through the office of air management as required by 326 IAC 18-3 /326 IAC 18-3 was repealed filed May 12, 1998, 9:15 a.m.: 21 IR 3771.J.

(E) All personnel involved in off-loading or in covering shall use appropriate personal protective equipment as necessary to prevent exposure to any airborne release of asbestos fibers during disposal operations.

(F) The solid waste land disposal facility must have a written contingency plan to safely control torn and broken containers. Dedicated equipment and supplies must be maintained at the facility to properly handle spilled or improperly packaged or wetted regulated asbestos-containing material. If nuisance or pollution conditions are created, the solid waste land disposal facility must take immediate corrective action directed by the asbestos disposal manager.

(5) The generator of RACM that does not result from the manufacture or grinding of asbestos-containing products shall submit the following statement, signed by the generator, to the disposal facility with each shipment: "I certify that I have made the waste determination required by 329 IAC 10-7.1. This shipment does not contain hazardous waste; or PCBs as defined at IC 13-11-2-155. I am authorized to submit this information. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for a knowing violation."

(e) Category II nonfriable asbestos-containing material, as defined in 40 CFR 61.141, that has not been made friable by forces reasonably expected to act on the material before disposal must be managed in accordance with the following:

- (1) Subsection (d)(1).
- (2) Subsection (d)(3).
- (3) Subsection (d)(4).
- (4) Label the containers or wrapped materials using warning labels that meet the requirements of 29 CFR 1910.1001(j)(4) and include the information in Figure 1:

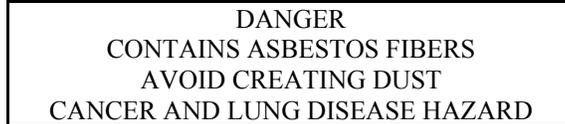


Figure 1.

(5) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(f) Wastes that meet the definition of special waste and contain polychlorinated biphenyls at a concentration equal to or greater than two (2) parts per million but less than fifty (50) parts per million must not be disposed of at an MSWLF unit or non-MSWLF unit unless the generator has complied with 329 IAC 4 [329 IAC 4 was repealed filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083. See 329 IAC 4.1.J]. The following requirements apply:

(1) If written authorization from the commissioner is required under 329 IAC 4-1-10(b) [329 IAC 4 was repealed filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083. See 329 IAC 4.1.J] prior to disposal of the waste, the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall have obtained that authorization prior to shipment of the waste.

(2) The generator of a spill from an electric transformer shall certify to the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit receiving the waste for disposal that the content of polychlorinated biphenyls in the waste does not exceed fifty (50) milligrams per kilogram, or fifty (50) parts per million, on a dry weight basis, as required in IC 13-20-7-6(b)(1).

(g) The following pesticide or pesticide-contaminated wastes must be managed in accordance with all applicable requirements of the federal Insecticide, Fungicide, and Rodenticide Act at 7 U.S.C. 136 et seq.:

(1) A pesticide that is required to bear one (1) or more of the following signal words on the label required by 40 CFR 156.10:

- (A) Danger.
- (B) Poison.
- (C) Warning.

(2) Media or debris contaminated with a pesticide described in subdivision (1).

(3) A container that has held a pesticide described in subdivision (1) that has not been prepared for disposal through triple rinses or puncturing the container.

(h) A hazardous waste that was listed in 40 CFR 261, Subpart D, and has been delisted in accordance with 40 CFR 260.22 must not be disposed of at an MSWLF unit or non-MSWLF unit unless the generator has submitted documentation of delisting to:

- (1) the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit that will dispose of the waste; and
- (2) the commissioner.

(Solid Waste Management Board; 329 IAC 10-8.1-12; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1722, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3367; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3785; filed Sep 10, 1999, 9:24 a.m.: 23 IR 11; errata filed Oct 8, 1999, 1:20 p.m.: 23 IR 344; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-8.1-13 Petroleum-contaminated spill waste

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 13. (a) When disposed of in a MSWLF unit or a non-MSWLF unit, petroleum contaminated spill waste must not:

- (1) fail the TCLP test for any constituent defined under 329 IAC 3.1 unless exempted from this criteria by 40 CFR 261.4(b)(10);
- (2) contain free liquids;
- (3) present a fire or explosion hazard; or
- (4) contain PCBs at concentrations greater than or equal to two (2) milligrams per kilogram.

(b) Each load of petroleum contaminated product spill waste must be accompanied by a disposal notification that includes the following:

- (1) The generator's business name, complete facility address for location of generation, and telephone number.
- (2) The cleanup contractor's name, complete facility address, and telephone number.
- (3) The identification and volume or weight of waste material.
- (4) The material spilled, released, leaked, or cleaned out.
- (5) The date the spill, release, leak, or cleanout occurred.
- (6) Location and county in which the spill, release, leak, or cleanout occurred.
- (7) A signed statement attesting that the information supplied on the disposal notification is true and accurate. An original signature must appear on the disposal notification for the first load of waste. The signature on disposal notifications for subsequent loads of the same waste may be photocopied; however, those photocopied signatures will be considered to have the same authority as the original signature.

(c) The generator or the cleanup contractor shall provide the solid waste land disposal facility with advance notification of intended disposal of petroleum contaminated spill waste. (*Solid Waste Management Board; 329 IAC 10-8.1-13; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1724, eff one hundred eighty (180) days after filing with the secretary of state; errata filed May 11, 1998, 11:15 a.m.: 21 IR 3367; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3786; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-8.1-14 Special waste reporting and record keeping requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 14. (a) The owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall ensure that copies of the following documents are maintained until certification of post-closure is deemed adequate by the commissioner:

- (1) Copies of special waste certifications provided by special waste generators.
- (2) Requests for special waste verification notices and accompanying documentation submitted by special waste generators.
- (3) Copies of all special waste verification notices and all notices of nonacceptance provided by the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit.
- (4) Special waste disposal notifications provided by special waste generators.

(b) Records that are required to be maintained by the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit under subsection (a) may be maintained at the solid waste land disposal facility or at an alternative location approved by the commissioner under 329 IAC 10-20-8.

(c) Records that are required to be maintained by the owner, operator, or permittee of the MSWLF unit or non-MSWLF unit under subsection (a) may be maintained in an alternative record keeping format, such as a computer file, provided:

- (1) the alternative format can be expected to reliably and accurately maintain all of the records in an unalterable form;
- (2) records in a paper format are maintained at the MSWLF or non-MSWLF for a period of at least three (3) years; and
- (3) the records are accessible to representatives of the department during normal operating hours.

(d) The owner, operator, or permittee of the MSWLF unit or non-MSWLF unit shall comply with all quarterly reporting requirements in 329 IAC 10-14-1. (*Solid Waste Management Board; 329 IAC 10-8.1-14; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1724, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3786; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 9. Solid Waste Land Disposal Facility Classification

329 IAC 10-9-1 Types of facilities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The following categories will be used for the purpose of defining site requirements and permissible wastes to be received for all solid waste land disposal facilities:

- (1) Municipal solid waste landfill (MSWLF).
- (2) Construction/demolition site.
- (3) Restricted waste site as follows:
 - (A) Restricted waste site Type I.
 - (B) Restricted waste site Type II.
 - (C) Restricted waste site Type III.
 - (D) Restricted waste site Type IV.
- (4) Nonmunicipal solid waste landfill.

(Solid Waste Management Board; 329 IAC 10-9-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3787; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-9-2 Municipal solid waste landfill waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
 Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 2. A municipal solid waste landfill may accept all solid waste regulated under this article except the following:
 (1) Special waste must be accepted at a municipal solid waste landfill only in accordance with 329 IAC 10-8.1.
 (2) Waste that is or that contains free liquids must not be accepted for disposal by any municipal solid waste landfill effective September 1, 1989. Free liquid shall be determined utilizing Method 9095 (Paint Filter Liquids Test) as described in U.S. Environmental Protection Agency Publication SW-846. This prohibition must not apply to those liquids allowed in 329 IAC 10-20-27.

(Solid Waste Management Board; 329 IAC 10-9-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1725, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-9-3 Construction/demolition site waste criteria

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) A construction/demolition site may accept construction/demolition waste as defined in 329 IAC 10-2-37. Other items are prohibited, except as specified in subsection (b).

(b) Specific, written approval by the commissioner for disposal of other items may be requested. Such approvals will be granted only if the other items to be disposed:

- (1) are incidental to the construction/demolition site;
- (2) are of a similar type and size to the items allowed by subsection (a); and
- (3) will not create a greater threat to the environment than the items allowed by subsection (a).

(Solid Waste Management Board; 329 IAC 10-9-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-9-4 Restricted waste sites waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
 Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 4. (a) A restricted waste site must accept only the restricted waste types specified in the facility permit, determined according to the classification criteria in this section.

(b) Restricted wastes accepted at a restricted waste site must be limited to one (1) waste type or related waste types that are as follows:

- (1) Expected to have similar chemical and physical composition.
- (2) Demonstrated to be within the concentration limits for the appropriate site type for each constituent for which testing is required. The concentration limits for each constituent for each site type are as follows:

(A) For constituents using the toxicity characteristic leaching procedure test as defined in 329 IAC 10-7.1:

TABLE 1
 Constituents Using the Toxicity Characteristic Leaching Procedure Test

Constituent	Concentration (milligrams per liter)			
	Type IV	Type III	Type II	Type I
Arsenic	≤*.05	≤.50	≤1.3	<**5.0
Barium	≤1.0	≤10.	≤25.	<100.
Cadmium	≤.01	≤.10	≤.25	<1.0
Chromium	≤.05	≤.50	≤1.3	<5.0
Lead	≤.05	≤.50	≤1.3	<5.0
Mercury	≤.002	≤.02	≤.05	<.20
Selenium	≤.01	≤.10	≤.25	<1.0
Silver	≤.05	≤.50	≤1.3	<5.0

(B) For constituents using the leaching method test:

TABLE 2
 Constituents Using the Leaching Method Test

SOLID WASTE MANAGEMENT BOARD

Constituent	Concentration (milligrams per liter)			
	Type IV	Type III	Type II	Type I
Barium	≤1.0	≤10.0	≤25.	***
Chlorides	≤250.	≤2,500.	≤6,300.	***
Copper	≤.25	≤2.5	≤6.3	***
Cyanide, total	≤.20	≤2.0	≤5.0	***
Fluoride	≤1.4	≤14.0	≤35.	***
Iron	≤1.5	≤15.0	***	***
Manganese	≤.05	≤.50	***	***
Nickel	≤.20	≤2.0	≤5.0	***
Phenols	≤.30	≤3.0	≤7.5	***
Sodium	≤250.	≤2,500.	≤6,300.	***
Sulfate	≤250.	≤2,500.	≤6,300.	***
Sulfide, total	≤1.0****	≤5.0	≤13.	***
Total dissolved solids	≤500.	≤5,000.	≤12,500.	***
Zinc	≤2.5	≤25.	≤63.	***

(C) For pH:

TABLE 3
pH

Constituent	Acceptable Range (Standard Units)			
	Type IV	Type III	Type II	Type I
pH	6.0-9.0	5.0-10.0	4.0-11.0	***

* ≤ means less than or equal to.

** < means less than.

*** Testing is not required.

**** If detection limit problems exist, please consult the Office of Solid and Hazardous Waste for guidance.

(3) The following apply to those wastes that have previously been classified using the extraction procedure toxicity test under 329 IAC 2, which was repealed in 1996, and now must be classified using the toxicity characteristic leaching procedure under this article:

(A) The waste must be classified as under 329 IAC 10-7.1 at the renewal of the current waste classification.

(B) If the results using the toxicity characteristic leaching procedure demonstrate a higher concentration of contaminants leaching from the waste than demonstrated using the extraction procedure toxicity test for the previous waste classification such that the waste now requires a restricted waste site type with more environmentally protective design and operating standards, the facility accepting the waste is subject to the following:

(i) For units undergoing closure, the facility must comply with the ground water monitoring and post-closure requirements of the more environmentally protective restricted waste site type.

(ii) Within one (1) year from the date that the new waste classification type is determined, the owner or operator shall:

(AA) submit an application to reclassify the facility to the restricted waste site type with the more environmentally protective standards; or

(BB) close the facility as required under item (i).

(iii) If the facility is comprised of previously closed units that are contiguous with existing or new units, the new and existing units must comply with item (ii) and the entire facility must comply with the ground water monitoring requirements of the more environmentally protective restricted waste site type.

(c) Coal combustion fly or bottom ash and flue gas desulfurization byproducts may be disposed of at a restricted waste site Type I without characterization testing, or at a restricted waste site Type II, III, or IV, if the following are completed:

(1) The waste is characterized as specified in 329 IAC 10-7.1.

(2) The waste is classified as specified in 329 IAC 10-7.1 for disposal and meets the criteria under subsection (b) for a restricted waste site Type II, III, or IV.

(3) Resampling is conducted:

(A) at five (5) year intervals;

(B) whenever the characteristics of the coal changes;

(C) whenever the process generating the waste changes; or

(D) according to a schedule for resampling specified by the commissioner based on variability noted in previous sampling and other factors affecting the predictability of waste characteristics.

(d) Foundry waste may be disposed of at a restricted waste site Type I, II, III, or IV if the following are completed:

- (1) The waste is characterized as specified in 329 IAC 10-7.1.
- (2) The waste is characterized as specified in 329 IAC 10-7.1 for disposal and meets the criteria under subsection (b) for a restricted waste site Type I, II, III, or IV.
- (3) Resampling is conducted:
 - (A) at two (2) year intervals;
 - (B) whenever the process changes; or
 - (C) according to a schedule for resampling by the commissioner based on variability noted in previous sampling and other factors affecting the predictability of waste characteristics.

(e) For waste other than those in subsections (c) through (d), the generator may request that the commissioner define test constituents and concentration limits needed to make a determination of which restricted waste site type adequately controls the expected hazards of the waste based on the chemical and physical characteristics of the waste. The commissioner may deny such a request for wastes that are heterogeneous, such as municipal garbage and trash and demolition debris, or wastes that are subject to organic decomposition, and other wastes for which test methods are inadequate to determine the hazards posed by the waste or its decomposition products.

(f) Notwithstanding sampling results that indicate that waste constituents exceed the criteria for a proposed restricted waste site type, the commissioner may approve the site if the permittee adequately demonstrates that:

- (1) the pH range encountered under leaching conditions likely to be encountered at the site will produce lower concentrations of waste constituents in any leachate generated;
- (2) due to precipitation, sorption, ion exchange, neutralization, reaction, or decomposition, the waste constituents will be removed from solution; or
- (3) dispersion and dilution likely to occur within the monitoring boundary, as defined in 329 IAC 10-2-113, will reduce the concentration of waste constituents in leachate as determined by the toxicity characteristic leaching procedure and leaching method tests.

(g) The generator shall submit a comprehensive list, comparable to material safety data sheets, of all organic additives used in the process unit operations generating the waste. If trade names are given to additives, it is the generator's responsibility to contact the manufacturer about supplying the commissioner with the chemical ingredient listing that makes up the trade name chemical and to have the manufacturer contact the commissioner with the proper information. The commissioner may require organic testing of the additive.

(h) Waste analyses submitted to the commissioner for review under subsections (a) through (g) must be accompanied by sufficient documentation of representative sampling and quality assurance and quality control measures to establish that the applicable procedures were conducted under adequate controls as stipulated in 329 IAC 10-7.1-4.

(i) The person seeking the restricted waste site waste classification shall include a signed statement attesting that the information provided is true and accurate that states, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I further certify that I am authorized to submit this information."

(j) The results of the waste classification indicating the restricted waste type determined by the commissioner must be provided in writing to the generator of the waste. A waste classification is not considered valid unless provided in writing by the commissioner. *(Solid Waste Management Board; 329 IAC 10-9-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1725, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-9-5 Nonmunicipal solid waste landfill waste criteria

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30-35

Sec. 5. (a) Nonmunicipal solid waste landfills may accept waste as specified in the facility permit. Other waste is prohibited, except as specified in subsection (b).

(b) A nonmunicipal solid waste landfill may accept other waste streams if:

- (1) it makes a written request to dispose of other solid waste; and
- (2) it is granted specific, written approval by the commissioner for disposal of other solid waste at the facility.

(Solid Waste Management Board; 329 IAC 10-9-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1807; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 10. Transition Requirements of Municipal Solid Waste Landfill Siting, Design, and Closure

329 IAC 10-10-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) Unless otherwise addressed in this rule, all MSWLFs and new and existing MSWLF units must comply with applicable requirements in this article after the effective date of this article.

(b) Within one hundred twenty (120) days following the effective date of this rule, the owner, operator, or permittee of a MSWLF permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, shall submit any necessary permit modification applications to comply with the requirements of this article. (*Solid Waste Management Board; 329 IAC 10-10-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1807; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3787*)

329 IAC 10-10-2 Pending applications

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-14; IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. A permit application:

- (1) that is received on or before June 21, 1995, will not be required to be revised to meet the requirements of this article; however, the application must comply with 329 IAC 2, which was repealed in 1996, and applicable federal requirements; or
- (2) that is received after June 21, 1995, will be required to comply with all applicable requirements of this article.

(*Solid Waste Management Board; 329 IAC 10-10-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1807; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2751*)

329 IAC 10-10-3 New and existing municipal solid waste landfill units

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) A new MSWLF unit for which a construction certification was submitted after January 1, 1997, must comply with the subsections of 329 IAC 10-16 and 329 IAC 10-17 that are applicable to the unit.

(b) A MSWLF unit that:

- (1) is constructed before the effective date of this article;
- (2) submits a construction certification before January 1, 1997; and
- (3) has not received waste in a constructed area of two (2) acres or less on January 1, 1998;

may continue to be filled to the permitted elevation.

(c) A MSWLF unit that:

- (1) is constructed before the effective date of this article;
- (2) has had a construction certification submitted before January 1, 1997; and
- (3) has not received waste in a constructed area greater than two (2) acres prior to January 1, 1998;

must comply with the applicable requirements of 329 IAC 10-16 and 329 IAC 10-17 in the portions of the MSWLF unit that have not received waste.

(d) A MSWLF unit that:

- (1) is constructed after the effective date of this article;
- (2) has had a construction certification submitted before January 1, 1997; and
- (3) has not received waste in a constructed area greater than two (2) acres prior to January 1, 1997;

must comply with the applicable requirements of 329 IAC 10-16 and 329 IAC 10-17 in the portions of the MSWLF unit that have not received waste.

(e) A MSWLF unit that:

- (1) is constructed after the effective date of this article;
- (2) has had a construction certification submitted before January 1, 1997; and
- (3) has not received waste in a constructed area of two (2) acres or less on January 1, 1997;

may continue to fill the MSWLF unit to the permitted elevation.

(f) Any sump area of a MSWLF unit that is constructed after January 1, 1996, and before January 1, 1997, must comply with the sump area requirements of 329 IAC 10-17-2(a)(2)(C) through 329 IAC 10-17-2(a)(2)(H).

(g) A MSWLF unit permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, and that closes on or before January 1, 1998, must close under the MSWLF's existing approved closure plan if it was constructed without:

- (1) a soil bottom liner; or

(2) a leachate collection system.

(h) Those MSWLF units meeting the requirements of subsection (g) may apply for up to a one (1) year extension of the closure period. The extension of the closure period must end on or before January 1, 1999. *(Solid Waste Management Board; 329 IAC 10-10-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1807; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2751; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3788)*

Rule 11. Application Procedure for All Solid Waste Land Disposal Facilities

329 IAC 10-11-1 Permit requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-15-7; IC 13-18; IC 13-26; IC 13-30-6; IC 36-9-30-35

Sec. 1. (a) Unless excluded by 329 IAC 10-3-1 or 329 IAC 10-3-2, and except for activities related to open dumps under 329 IAC 10-4-4, and as otherwise provided in 329 IAC 10-5, any person who disposes of solid waste shall have a solid waste land disposal facility permit prior to construction and disposal.

(b) In the event that after the permit application is submitted but prior to the issuance of the permit, there is any change that renders the information in the application incorrect, the applicant shall notify the commissioner of the change within fifteen (15) days and submit corrected information within a reasonable period of time.

(c) The commissioner may deny a permit application, including a renewal permit, or place conditions on a permit for the following:

(1) The applicant has been convicted of a crime under IC 13-30-6 or IC 36-9-30-35.

(2) The commissioner, under IC 13-15-7, has revoked the applicant's previous permit to operate under:

(A) this article;

(B) 329 IAC 1.5, which was repealed in 1989; or

(C) 329 IAC 2, which was repealed in 1996.

(3) The applicant is, at the time of the application or permit decision, not in compliance with the Environmental Protection Acts or regulations promulgated thereunder, or has a history of repeated violations of the Acts or regulations or material permit conditions that evidence an inability or unwillingness to comply with requirements of this article or a facility permit.

(Solid Waste Management Board; 329 IAC 10-11-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1808; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2752)

329 IAC 10-11-2 Permit application for new facilities and lateral expansions (Repealed)

Sec. 2. (Repealed by Solid Waste Management Board; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3875)

329 IAC 10-11-2.1 General permit application requirements

Authority: IC 13-14-8-7; IC 13-15-2-1

Affected: IC 4-21.5-3-5; IC 13-14-11-3; IC 13-18; IC 13-20-21; IC 36-7-4; IC 36-9-30

Sec. 2.1. (a) An application for any solid waste land disposal facility permit, including renewals, or for a modification to a solid waste land disposal facility permit, excluding insignificant modifications, must be submitted to the commissioner on permit application forms provided by the commissioner, in a format specified by the commissioner. All narrative, plans, and other support documentation accompanying the application must also be submitted in a format specified by the commissioner.

(b) A complete application must include all of the following information:

(1) The name and address of the applicant.

(2) The name and address of the solid waste land disposal facility site.

(3) The name and address of the solid waste land disposal facility owner, operator, or permittee if different from the real property owner.

(4) The names and addresses of members of the board of county commissioners of a county that is affected by the permit application.

(5) The names and addresses of the mayors of any cities that are affected by the permit application.

(6) The names and addresses of the presidents of town councils of any towns that are affected by the permit application.

(7) The legal description as defined in 329 IAC 10-2-104 for the following:

(A) The solid waste land disposal facility boundaries.

(B) If applicable, the solid waste boundary defining the area where the solid waste is to be deposited.

(C) Sufficient documentation must be provided to verify that the waste deposition area is located within the facility boundaries. Documentation must include a map of the legal description for these areas certified by a registered land

surveyor.

- (8) Solid waste land disposal facility information, including the following:
 - (A) A description of the type of operation.
 - (B) The planned life of the solid waste land disposal facility in years.
 - (C) The expected volume of waste to be received in tons per operating day and cubic yards per operating day.
 - (D) The type of waste to be received.
- (9) Signatures and certification statements in compliance with section 3 of this rule.
- (c) Five (5) copies of the completed application and all supporting documentation must be submitted to the commissioner as follows:

follows:

- (1) Sent by registered mail or certified mail or delivered in person.
- (2) In addition to the paper copies, a copy of the completed application and all supporting documentation may be submitted on digital media, the type and format of which will be prescribed by the department.
- (3) Plans and documentation accompanying the application shall be submitted as required in 329 IAC 10-15-1(c).
- (d) Confidential treatment of information may be requested in accordance with the rules of the solid waste management board for the permit application and supporting documents.
- (e) All corporations must submit a copy of the certificate of existence signed by the secretary of state.
- (f) Fees must be submitted with the application in accordance with IC 13-20-21. (*Solid Waste Management Board; 329 IAC 10-11-2.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3788*)

329 IAC 10-11-2.5 Permit application for new land disposal facility and lateral expansions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 4-21.5-3-5; IC 13-14-11-3; IC 13-18; IC 13-20-21; IC 36-7-4; IC 36-9-30

Sec. 2.5. (a) In addition to the application requirements given at section 2.1 of this rule, a complete application for a solid waste land disposal facility permit or for a major modification of a solid waste land disposal facility permit for a lateral expansion must include all the following information:

- (1) Detailed plans and design specifications as required by:
 - (A) 329 IAC 10-15 through 329 IAC 10-19 and 329 IAC 10-22, as applicable;
 - (B) 329 IAC 10-24 through 329 IAC 10-27 and 329 IAC 10-30, as applicable; or
 - (C) 329 IAC 10-32 through 329 IAC 10-35 and 329 IAC 10-37, as applicable.
- (2) Closure and post-closure plans as required by:
 - (A) 329 IAC 10-22-2 and 329 IAC 10-23-3, as applicable;
 - (B) 329 IAC 10-30-4 and 329 IAC 10-31-3, as applicable; or
 - (C) 329 IAC 10-37-4 and 329 IAC 10-38-3, as applicable.
- (3) The detailed plans and design specifications required by subdivision (1) and the closure and post-closure plans required by subdivision (2) must be certified by a registered professional engineer and must be properly titled.
- (4) A description of the financial instrument that will be used to achieve compliance with financial responsibility provisions of 329 IAC 10-39.
- (5) Documents necessary to establish ownership or other tenancy, such as an option to purchase, of the real estate upon which the solid waste land disposal facility to be permitted is located. The documentation must include a certified copy of the deed to the subject real estate showing ownership in the person identified as the owner in the application or the deed and evidence satisfactory to the commissioner that ownership will be transferred to the proper person for purposes of this rule, if not already done, prior to operation of the solid waste land disposal facility.
- (6) Documentation that proper zoning approvals have been obtained, including the following, if applicable:
 - (A) A copy of the zoning requirements, if any, for solid waste facilities in the area where the solid waste land disposal facility is to be located.
 - (B) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area where the solid waste land disposal facility is to be located.
 - (C) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq. if a change in the zone maps is required for the area where the solid waste land disposal facility is to be located.
 - (D) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq. if such amendment is required for the area where the solid waste land disposal facility is to be located.
 - (E) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq. if such approval is required for the area where the solid waste land disposal facility is to be located.
 - (F) The status of any appeal of any zoning determination as described in clauses (B) through (E), and if none is pending, the date by which the appeal must be initiated.

(7) A United States Geological Survey topographical quadrangle map seven and one-half (7½) minute, or equivalent, to include all areas within two (2) miles of the proposed facility boundaries with property boundaries and proposed solid waste boundaries clearly delineated.

(8) Documentation of the base flood elevation within one-fourth (¼) mile of the proposed facility boundaries. Either of the following forms of documentation are acceptable:

- (A) A letter from the department of natural resources.
- (B) A national flood insurance program map.

(9) A scaled map that depicts the following features, which are known to the applicant or are discernable from public records, on and within one-half (½) mile of the proposed facility boundaries:

- (A) Airports.
- (B) Buildings.
- (C) City, township, county, state, or national forests or parks.
- (D) Coal borings.
- (E) Culverts.
- (F) Drainage tiles.
- (G) Dwellings.
- (H) Fault areas.
- (I) Floodplains.
- (J) Gas or oil wells.
- (K) Hospitals.
- (L) Legal drains.
- (M) Nature preserves regulated under IC 14-4-5 [*IC 14-4 was repealed by P.L.1-1995, SECTION 91, effective July 1, 1995.*] or critical habitats regulated under 50 CFR 17.
- (N) Pipelines.
- (O) Power lines.
- (P) Roads.
- (Q) Schools.
- (R) Sewers.
- (S) Sinkholes.
- (T) Springs and seeps.
- (U) Surface or underground mines.
- (V) Swamps.
- (W) Water courses or surface water, including reservoirs.
- (X) Wells.
- (Y) Wetlands.

(10) A soil map and related description data as published by the United States Department of Agriculture, Natural Resources Conservation Service.

(11) Well logs and a topographic map indicating the location and identifying with respect to the drilling logs, all wells within one (1) mile of the proposed facility boundaries that are on file with the department of natural resources.

(12) A survey must be conducted for any residences or occupied buildings within one-fourth (¼) of a mile of the proposed facility boundaries that do not have a well log. The survey is to determine whether wells that do not have well logs on file with the department of natural resources are present and obtain any information regarding these wells. A summary of the results of the survey and any information gained must be included with the application.

(13) The name and address of all owners or last taxpayers of record of property:

- (A) located within one (1) mile of the proposed solid waste boundaries of a solid waste land disposal facility; and
- (B) of adjoining land that is within one-half (½) of a mile of the solid waste boundary.

(14) A signed affidavit to the department agreeing to notify adjoining land owners as required in 329 IAC 10-12-1(b)(1).

(15) The following information relative to wetlands under 329 IAC 10-16-3 and other waters of the state:

- (A) A copy of the U.S. Army Corps of Engineers Section 404 of the Clean Water Act permit and a copy of the Indiana department of environmental management Section 401 water quality certification or documentation acceptable to the department that a Section 404 and Section 401 water quality certification are not required.
- (B) Any other mitigation plans required by any other government agency including permit conditions or restrictions placed on the siting of the solid waste land disposal facility in relationship to any other waters of the state as defined by 329 IAC 10-2-205.

(b) Restricted waste site Type III and construction/demolition landfills are exempt from submitting the information required in subsection (a)(9). (*Solid Waste Management Board; 329 IAC 10-11-2.5; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3789*)

329 IAC 10-11-3 Signatories to permit application and reports

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) All permit applications must be signed as follows:

- (1) For a corporation, by a responsible corporate officer.
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.
- (3) For a unit of government or state, by the executive of the unit.
- (4) For a federal or other public agency, by either:
 - (A) a principal executive officer or ranking elected official; or
 - (B) a senior executive officer;

having responsibility for the overall operations of a principal geographic unit of the agency that covers the facility to be permitted.

(b) All reports required by permits and other information requested by or on behalf of the commissioner must be signed by the permittee or by a duly authorized representative of that person. A person is presumed to be an authorized representative if:

- (1) the information is submitted on behalf of a person described in subsection (a);
- (2) the information is submitted in response to a requirement of the permit or in response to a request for information directed to a person described in subsection (a); or
- (3) written authorization is submitted to the commissioner by an individual identified in subsection (a) that identifies a specific individual or position as authorized to submit information.

(c) If an authorization under subsection (b)(3) is no longer accurate, a new authorization satisfying the requirements of subsection (b)(3) must be submitted to the commissioner prior to or together with any reports of information to be signed by the authorized representative.

(d) Any person signing a document under subsection (a) or (b) shall make a certification that states, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I further certify that I am authorized to submit this information." (Solid Waste Management Board; 329 IAC 10-11-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1810)

329 IAC 10-11-4 Renewal permit application (Repealed)

Sec. 4. (Repealed by Solid Waste Management Board; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3875)

329 IAC 10-11-4.1 Application for vertical expansions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20-21; IC 36-9-30

Sec. 4.1. (a) In addition to the application requirements given at section 2.1 of this rule, a complete application for major modification of a solid waste land disposal facility permit involving only a vertical expansion must include all the information and documentation required at 329 IAC 10-18-1 for MSWLFs and at 329 IAC 10-26-3 for non-MSWLFs.

(b) In addition to the application requirements given at subsection (a) and section 2.1 of this rule, a complete application for a vertical expansion of a solid waste land disposal facility permit involving only a minor modification must include the name and address of all owners or last taxpayers of record of property of adjoining land that is within one-half (1/2) mile of the solid waste boundary.

(c) Fees must be submitted with the application in accordance with IC 13-20-21. (Solid Waste Management Board; 329 IAC 10-11-4.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3791)

329 IAC 10-11-5 Applications for vertical expansions (Repealed)

Sec. 5. (Repealed by Solid Waste Management Board; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3875)

329 IAC 10-11-5.1 Renewal permit application

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20-21; IC 36-9-30

Sec. 5.1. (a) In addition to the application requirements given at section 2.1 of this rule, a complete application for a renewal of a solid waste land disposal facility permit must include all the following information:

- (1) The name and address of all owners or last taxpayers of record of property of adjoining land that is within one-half (½) mile of the solid waste boundary.
- (2) The operation permit number of the solid waste land disposal facility.
- (3) The legal description of the solid waste land disposal facility location as defined in 329 IAC 10-2-104.
- (4) Facility information, including the following:
 - (A) A description of the type of operation under 329 IAC 10-9-1.
 - (B) The number of acres permitted for waste disposal.
 - (C) The remaining life of the solid waste land disposal facility in years.
 - (D) The volume of waste received at the solid waste land disposal facility in cubic yards per operating day or tons per operating day.
 - (E) The type of waste received at the solid waste land disposal facility.
- (5) A topographic plot plan that reflects the current condition of the solid waste land disposal facility and current elevations taken within six (6) months of the submittal of the application and accurately identifying the following information to a scale as required by 329 IAC 10-15-2(a), 329 IAC 10-24-2(a), or 329 IAC 10-32-2(a):
 - (A) Areas of final cover, grading, and seeding.
 - (B) Filled areas lacking final cover, grading, and seeding.
 - (C) Current areas of operation, including depth of waste fill.
 - (D) Projected solid waste disposal areas on a per year basis for the next five (5) years.
- (6) Signatures and certification statements in compliance with section 3 of this rule.
- (b) An application for a renewal of a solid waste land disposal facility permit must be submitted at least one hundred twenty (120) days prior to the expiration date of the permit or the permit will be invalid upon expiration.
- (c) Fees must be submitted with the application in accordance with IC 13-20-21. (*Solid Waste Management Board; 329 IAC 10-11-5.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3791*)

329 IAC 10-11-6 Minor modification applications

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-20-1
 Affected: IC 13-18; IC 13-20-1; IC 13-20-21; IC 13-21-5; IC 36-9-30

Sec. 6. (a) In addition to the application requirements given at section 2.1 of this rule for a minor modification of a solid waste facility permit, adequate information must be included in an application for a minor modification of a solid waste land disposal facility permit to demonstrate that the minor modification will be protective of human health and the environment. The commissioner shall determine the information adequate based on the type of minor modification requested by the facility.

(b) In addition to any requirements in subsection (a), the application must also include the name and address of all owners or last taxpayers of record of property of adjoining land that is within one-half (½) mile of the solid waste boundary.

(c) Fees must be submitted with the application in accordance with IC 13-20-21. (*Solid Waste Management Board; 329 IAC 10-11-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1812; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2755; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3791*)

329 IAC 10-11-7 Demonstration and determination of need requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-20-1
 Affected: IC 13-18; IC 13-20-1; IC 13-21-5; IC 36-9-30

Sec. 7. (a) This section applies to all permits for new solid waste land disposal facilities or major modifications of permits submitted after March 20, 1990, except those solid waste land disposal facilities exempt under IC 13-20-1.

(b) In accordance with subsection (a) and in addition to other permit application requirements outlined in this article, the following are also required:

- (1) A description of the anticipated area that would be served by the solid waste land disposal facility as indicated by the following:
 - (A) Solid waste management districts or portions of districts.
 - (B) A county, multiple counties, or portions of counties.
 - (C) A county or multiple counties and the state if the area includes portions outside of Indiana.
- (2) A description of the existing solid waste facilities that serve the same described area.
- (3) A description of the need that would be fulfilled by constructing the proposed solid waste land disposal facility, as follows:
 - (A) If the solid waste land disposal facility is proposed in areas with approved district solid waste management plans, a description of the need identified in the district solid waste management plan required by IC 13-21-5.

(B) If the solid waste land disposal facility is proposed in areas without approved district solid waste management plans, a description of the need for the proposed area to be served.

(4) A description of recycling, composting, or other activities that the solid waste land disposal facility would operate within the proposed area of service.

(5) A description of the additional disposal capacity that the solid waste land disposal facility, if permitted, would provide for the proposed area of service.

(6) Additional information as requested by the commissioner.

(c) This application requirement is satisfied if it is determined that the capacity applied for is reasonably related to the need shown based upon:

(1) average or representative annual existing disposal volumes for the solid waste land disposal facility, multiplied by twenty (20) years;

(2) twenty (20) year solid waste disposal projections in approved solid waste district plans for each solid waste management district identifying the solid waste land disposal facility as a facility to be used by the district;

(3) a shortfall in capacity as shown by the twenty (20) year solid waste plan for the solid waste management district in which the solid waste land disposal facility is located; or

(4) any combination of the criteria listed in this subsection.

(d) The commissioner shall review the submitted application and the accompanying materials in accordance with provisions of this article. If it is determined that there is not a local or regional need in Indiana for the solid waste land disposal facility, the commissioner shall deny the permit application. (*Solid Waste Management Board; 329 IAC 10-11-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1812; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2755; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3792*)

Rule 12. Actions for Permit and Renewal Permit Application

329 IAC 10-12-1 Public process for new solid waste land disposal facility permits and major modifications to permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3; IC 13-20-1

Affected: IC 5-3-1-2; IC 5-3-1-6; IC 5-3-2; IC 13-15-3-3; IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) A person submitting an affidavit as required by 329 IAC 10-11-2.5(a)(13) and an application for one (1) of the following shall make notice as required in subsection (b):

(1) A new solid waste land disposal facility permit.

(2) A major modification for a lateral expansion permit.

(3) A minor modification permit under 329 IAC 10-2-112(a)(2).

(b) The notice required by subsection (a) must include the following:

(1) Not more than ten (10) working days after submitting an application, an applicant shall make a reasonable effort to notify the owners of record of adjoining land to the solid waste land disposal facility or proposed solid waste land disposal facility.

(2) The notice provided by the applicant in this subsection must:

(A) be in writing;

(B) include the date on which the application for the permit was submitted to the department; and

(C) include a brief description of the subject of the application.

(c) A public meeting must be conducted by the applicant submitting an application for the following:

(1) A new solid waste land disposal facility permit.

(2) A major modification to a solid waste land disposal facility permit.

(d) The applicant shall complete the following for the public meeting required in subsection (c):

(1) Within sixty (60) days after the date the applicant received notification from the commissioner that the application has been deemed complete, conduct a public meeting in the county where the solid waste land disposal facility or major modification designated in the application is located.

(2) Publish notice of the public meeting required in subdivision (1) at least ten (10) days prior to the meeting in a newspaper of general circulation in the county where the solid waste land disposal facility or major modification will be located. The notice must:

(A) be at least two (2) columns wide by five (5) inches long;

(B) not be placed in the part of the newspaper where the legal notices and classified advertisements appear;

(C) include the time and date of the public meeting;

(D) state the exact place of the public meeting; and

(E) have every effort made by the applicant and the department to coordinate the publication date of the notice of the public meeting held by the applicant as required by this subdivision with the publication date of the notice of public hearing held by the department as required in subsection (i)(1).

(3) Conduct the public meeting as follows:

- (A) Present a brief description of the location and operation of the proposed solid waste land disposal facility or major modification.
- (B) Indicate where copies of the application have been filed.
- (C) If the applicant proposes a design alternative, the applicant must briefly describe the alternative design.
- (D) State that the department will accept written comments and questions from the public on the permit application and announce the address of the department and name of the person accepting comments on behalf of the department.
- (E) Provide fact sheets on the proposed solid waste land disposal facility or major modification that have been prepared by the department for the public. A department representative shall attend the meeting.
- (F) Offer the opportunity for public comments and questions.

(e) Within five (5) days after the date the applicant received notification from the commissioner that the application has been deemed complete by the department, the applicant shall place a copy of the complete application and any additional information that the department requests at a library in the county where the solid waste land disposal facility or major modification will be located.

(f) The applicant shall pay the costs of complying with subsections (c) through (e).

(g) Failure of the applicant to comply with subsections (c) through (f) may result in the denial of the application by the department.

(h) Public notice must be made by the department as required by IC 5-3-1-2(h) after the date the applicant received notification from the commissioner that the permit application is deemed completed. The public notice must meet the following requirements:

- (1) Indicate where copies of the application are available for public review.
- (2) State that the department will accept comments from the public on the application for at least thirty (30) days.
- (3) Offer the opportunity for a public hearing on the application.
- (4) The department shall publish the notice in accordance with IC 5-3-1-6.
- (5) If the facility boundary of the proposed solid waste land disposal facility or major modification, if also a lateral expansion, will be within one (1) mile of the county boundary, the department will publish the notice in accordance with IC 5-3-1-6 in the adjacent county.
- (6) In addition to the requirements in IC 5-3-1-6, the department shall publish the notice in two (2) newspapers in the county where the solid waste land disposal facility or major modification is located, if there are two (2) newspapers of general circulation in the county.
 - (i) The department shall hold a public hearing as required by IC 13-15-3-3. The following apply to a public hearing:
 - (1) The department shall publish notice of the hearing as required in IC 5-3-1 and IC 5-3-2 in newspapers of general circulation in the county where the solid waste land disposal facility (if a major modification) or proposed solid waste land disposal facility is located.
 - (2) During a hearing, a person may testify within the time provided or submit written comments, or both. The department will consider testimony that is relevant to the requirements of IC 13 and this article.

(Solid Waste Management Board; 329 IAC 10-12-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1812; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2756; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3792)

329 IAC 10-12-2 Application review

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-15-8; IC 13-18; IC 13-20-8; IC 36-9-30

Sec. 2. (a) Time periods for determination on permit application are under IC 13-15-8.

(b) Procedures for application review are under IC 13-15-8.

(c) Remedies are under IC 13-15-8. *(Solid Waste Management Board; 329 IAC 10-12-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1813; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2757)*

Rule 13. Permit Issuance and Miscellaneous Provisions

329 IAC 10-13-1 Issuance procedures; original permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-11; IC 13-12; IC 13-13; IC 13-14-8; IC 13-16; IC 13-17; IC 13-18; IC 13-19; IC 13-20; IC 13-21; IC 13-22; IC 13-23; IC 13-24; IC 13-25; IC 13-26; IC 13-27; IC 13-27.5; IC 13-29; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The department shall comply with the procedural requirements of IC 13-15-3, IC 13-15-5, and IC 13-15-6 pertaining to public notice, public comment, and public hearing for an application for an original permit for a solid waste land disposal facility regulated under IC 13-19-3.

(b) Subject to the provision of 329 IAC 10-11-1(c), if the department determines that the permit application meets the requirements of this article, and that the solid waste land disposal facility will be constructed and operated in accordance with the

requirements of this article and the applicant is otherwise in compliance with the environmental statutes of Indiana, the permit will be granted. The department may impose such conditions in a permit as may be necessary to:

- (1) comply with the requirements of this article, IC 13-11 through IC 13-30, and IC 36-9-30; or
- (2) protect the public health and the environment.
- (c) The notice of the granting of a permit must state that the permit will not become effective until:
 - (1) all financial responsibility documents have been executed and delivered to the department in the form and amount specified; and
 - (2) the completion and execution of any real estate transfers necessary to vest legal title of the real estate upon which the permitted activity is to occur in the name of the owner listed on the application have been completed, executed, and such documentation necessary to evidence such transfer has been recorded and delivered to the department, or proof of the applicant's agreement regarding the leasing of this property has been submitted to the department.

(d) Notwithstanding subsection (c), a variance granted under IC 13-14-8 must not be transferred to another person without independent proof of undue hardship or burden by the person seeking transfer. (*Solid Waste Management Board; 329 IAC 10-13-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1814; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2757; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3793*)

329 IAC 10-13-2 Issuance procedures; renewal permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20-8; IC 13-30-2; IC 36-9-30

Sec. 2. (a) After the commissioner concludes that the renewal application is complete, the following is required:

- (1) The commissioner shall comply with the procedural requirements of IC 13-15-3, IC 13-15-5, and IC 13-15-6 for a renewal permit of a solid waste land disposal facility regulated under IC 13-19-3.
- (2) The commissioner shall review the application to determine whether the solid waste land disposal facility or the operation is in compliance with the plans and specifications in its existing permit. The commissioner may request clarification or supplementation of information submitted in support of the renewal application. The commissioner shall evaluate the facility's compliance record under:
 - (A) the operational requirements of 329 IAC 10-20, 329 IAC 10-28, or 329 IAC 10-36 as appropriate; and
 - (B) any prior or existing permit conditions.

(b) Subject to the provisions of 329 IAC 10-11-1(c), after the provisions of subsection (a) have been accomplished and the commissioner determines that the solid waste land disposal facility is in compliance with the requirements of this article and the permit conditions, including any additions to or revisions of the conditions in the existing permit, the commissioner shall grant renewal of the permit. (*Solid Waste Management Board; 329 IAC 10-13-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1814; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2757; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3794*)

329 IAC 10-13-3 Duration of permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-15-3-2; IC 13-15-7-1; IC 13-18; IC 36-9-30

Sec. 3. A permit including a renewal permit must be issued for a fixed term not to exceed five (5) years in accordance with IC 13-15-3-2. A permit may be modified or revoked prior to the expiration of the term for cause as provided in section 6 of this rule or in accordance with conditions set forth in the permit and IC 13-15-7-1. (*Solid Waste Management Board; 329 IAC 10-13-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1814; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2758*)

329 IAC 10-13-4 Effect of permit issuance

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) The issuance of a permit does not:

- (1) convey any property rights of any sort or any exclusive privileges to the permittee;
- (2) authorize:
 - (A) any injury to any person or private property;
 - (B) invasion of other private rights; or
 - (C) any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other state or local requirements.

(b) The owner, operator, and permittee of a solid waste land disposal facility and the owner or owners of the land upon which a solid waste land disposal facility is located shall be liable for any environmental harm caused by the facility.

(c) The permittee shall construct and operate a solid waste land disposal facility in accordance with the permit. The owner, operator, and permittee are equally responsible for complying with the conditions of the permit, the regulations, and the statutes. (*Solid Waste Management Board; 329 IAC 10-13-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1814*)

329 IAC 10-13-5 Transferability of permits

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-15-7; IC 13-18; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) A permit may be transferred to a third person by the permittee without the need for a new permit or modification or revocation of the existing permit being required if:

- (1) the permittee notifies the commissioner of the proposed transfer at least sixty (60) days before the proposed date of transfer on forms provided by the commissioner;
- (2) a written contract between the permittee and the third person containing a specific date of transfer of permit responsibility is submitted to the commissioner;
- (3) the transferee has not been convicted under IC 13-30-6 or IC 36-9-30-35;
- (4) the commissioner has not revoked under IC 13-15-7 a permit to the transferee that was issued under:
 - (A) this article;
 - (B) 329 IAC 1.5, which was repealed in 1989; or
 - (C) 329 IAC 2, which was repealed in 1996;
- (5) the third person is, at the time of the application or permit decision, in compliance with the Environmental Protection Acts and regulations promulgated thereunder and does not have a history of repeated violations of the Acts or regulations or material permit conditions that evidence an inability or unwillingness to comply with requirements of this article or a facility permit;
- (6) the transferee provides proof of financial responsibility under 329 IAC 10-39; and
- (7) the transferee provides proof that it is, or will be, the owner of the real property or provides proof of the applicant's agreement regarding the leasing of the property to the department.

(b) The transfer will be effective on the specific date of transfer provided by the permittee unless the commissioner notifies the permittee and the transferee that the transfer will be denied.

(c) Notwithstanding the transfer of a permit, a variance must not be transferred to another person. (*Solid Waste Management Board; 329 IAC 10-13-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2758*)

329 IAC 10-13-6 Permit revocation and modification

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 4-21.5-3-7; IC 13-15-7-1; IC 13-18; IC 36-9-30

Sec. 6. (a) The commissioner may revoke or modify a permit issued under this article if cause exists under IC 13-15-7-1 and may request an updated application if necessary. When a permit is modified, only the conditions subject to modifications are reopened and subject to review under IC 13-15-7 and IC 4-21.5-3-7. If a permit is revoked, the entire permit is reopened and subject to revision and if the permit is reissued, it may be for a new term.

(b) The commissioner may revoke a permit if the permit applicant is found by the department to have knowingly or intentionally falsified or supplied inaccurate information.

(c) If the solid waste land disposal facility is located in an area that is not suitable for the placement of waste as specified by this article, the department shall consider the nonsuitability issue as a sufficient basis for denying the modification or for revoking the permit unless the permittee demonstrates to the department that continued use of the solid waste land disposal facility will not pose a threat to human health or the environment.

(d) To request a change in the solid waste land disposal facility plans or operation, the permittee must request that the commissioner modify the permit before any permitted changes are made in the approved plans. The application must provide the rationale for such modification to the commissioner for review. If the commissioner determines that the requested modification is consistent with the standards established in this article, the commissioner shall grant the modification. Only the conditions subject to modifications are reopened. The commissioner shall give notice to the permittee of the determination on the modification in accordance with IC 13-15-7 and IC 4-21.5-3-7.

(e) Other than for minor modifications, requests to modify a permit to increase the permitted acreage of the solid waste disposal area of a solid waste land disposal facility shall be processed in accordance with section 1 of this rule. (*Solid Waste Management Board; 329 IAC 10-13-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2758; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3794*)

Rule 14. Solid Waste Land Disposal Facilities; Quarterly Reports and Weighing Scales

329 IAC 10-14-1 Quarterly reports

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 24-6; IC 36-9-30

Sec. 1. (a) A quarterly tonnage report of solid waste received at the solid waste land disposal facility must be submitted to the commissioner by the owner, operator, or permittee of that facility.

(b) The report required by subsection (a) must be submitted on or before the fifteenth day of the month immediately following the end of the calendar quarter being reported. If the submittal date falls on a Saturday, a Sunday, or a national or state legal holiday, the submittal date will be the next day that is not a Saturday, a Sunday, or a national or state legal holiday.

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the solid waste land disposal facility that is open to accept solid waste for disposal unless the owner, operator, or permittee of the solid waste land disposal facility has ceased accepting solid waste for a period of at least one (1) calendar quarter, and has sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 10-22-4, 329 IAC 10-30-6, or 329 IAC 10-37-6 as appropriate.

(d) The solid waste hauler shall provide the owner, operator, or permittee of the solid waste land disposal facility with the origin of the solid waste delivered to the solid waste land disposal facility. The hauler shall estimate, by percent, the type and amount of solid waste originating in each county and state, or country if other than the United States, if the load contains solid waste from more than one (1) county, state, or country.

(e) The owner, operator, or permittee of the solid waste land disposal facility shall submit the quarterly tonnage report required by subsection (a) as follows:

(1) On the most current paper report form prescribed by the department. The owner, operator, or permittee may obtain a quarterly tonnage report form from the department. The form:

(A) may be photocopied by the owner, operator, or permittee of the solid waste land disposal facility; and

(B) in its most current format, may be computer generated by the owner, operator, or permittee of the solid waste land disposal facility.

(2) The original of each paper report must be signed by the solid waste land disposal facility owner, operator, or permittee as certification of report accuracy.

(3) Each report must be accurate, legible, and complete.

(4) One (1) additional paper copy of each original paper report must be submitted with the original paper report required in subdivision (6).

(5) In addition to the paper report required in subdivision (1), an electronic report in a format approved by the commissioner may also be submitted.

(6) The paper report and any approved format required by this subsection must include at least the following information:

(A) The weight in total tons of solid waste received at the solid waste land disposal facility for that calendar quarter compiled by waste type and origin.

(B) The county and state in which the solid waste originated. If the solid waste originated outside of the United States, the country must be designated. The origin must be provided to the solid waste land disposal facility by the solid waste hauler as described in subsection (d).

(C) The type, total weight in tons, and final destination of solid waste diverted from disposal for reuse or recycling after being received at the solid waste land disposal facility.

(D) The estimated remaining disposal capacity, in cubic yards, that is calculated by subtracting the existing fill volume as determined by the contour map required by 329 IAC 10-20-8(a)(6) from the design capacity.

(E) The estimated remaining solid waste land disposal facility life, in years, for the remaining disposal capacity.

(F) Waste types including the following:

(i) Municipal solid waste.

(ii) Construction/demolition waste.

(iii) Special waste.

(iv) Other solid waste.

(f) If the owner, operator, or permittee of the solid waste land disposal facility ascertains that there is an error in any report previously submitted as required by subsection (a), a revised report reflecting the correct information must be submitted in the same format as the original submission. The revised report must:

(1) have "Amended" written or typed at the top of each page of the resubmitted report; and

(2) be submitted before or with the submission of the next quarterly tonnage report after ascertaining an error.

(g) Copies of reports required by this section must be:

(1) maintained on-site by the solid waste land disposal facility owner, operator, or permittee for three (3) years after the submittal date of the report; and

(2) made available during normal operating hours for on-site inspection and photocopying by a representative of the department.

(h) The solid waste land disposal facility owner, operator, or permittee shall maintain the documentation on-site to substantiate reports required by this section. Such documentation must be:

- (1) maintained by the solid waste land disposal facility owner, operator, or permittee for three (3) years after the report's submittal date; and
- (2) made available during normal operating hours for on-site inspection and photocopying by a representative of the department.

(i) Failure to submit reports and copies as required by this section or maintain copies of reports and records as required by this section constitutes an operational violation under 329 IAC 10-1-2. (*Solid Waste Management Board; 329 IAC 10-14-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1815; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2759; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3795*)

329 IAC 10-14-2 Weighing scales

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20-2; IC 24-6-3-5; IC 36-9-30

Sec. 2. (a) This section applies to either of the following:

(1) Solid waste land disposal facilities receiving a permit from the department after January 1, 1994, that are required to install weighing scales.

(2) Existing solid waste land disposal facilities required to install weighing scales under the following conditions:

(A) The solid waste land disposal facility is open to accept solid waste for disposal.

(B) Based on reporting results required by section 1(a) of this rule, the solid waste land disposal facility accepts in any calendar year an annual average of more than fifty (50) tons of solid waste per operating day.

(b) This section does not apply to any solid waste land disposal facility that receives solid waste from a person that:

(1) generates the solid waste; and

(2) disposes of the solid waste at a solid waste land disposal facility that is:

(A) owned by that person; and

(B) limited to use for the disposal of solid waste generated by that person.

(c) Solid waste land disposal facilities required to install weighing scales by subsection (a) must:

(1) install the weighing scales within twelve (12) months of determining the installation is required;

(2) notify the department in writing of the date the weighing scales became operable after installation;

(3) effectively maintain and operate these weighing scales in accordance with IC 24-6;

(4) submit to inspection of the weighing scales under IC 24-6-3-5; and

(5) weigh all vehicles bringing solid waste to the solid waste land disposal facility and report the total weighed quantity of solid waste in tons as required by section 1 of this rule.

(d) In the event that the weighing scales required in subsection (a) break down or are operating improperly:

(1) the solid waste land disposal facility owner, operator, or permittee may use the waste quantification methods in subsection (e) for the duration of the scale breakdown;

(2) the solid waste land disposal facility owner, operator, or permittee shall submit a written notification of the breakdown with each quarterly tonnage report required under section 1 of this rule for each affected quarter;

(3) the solid waste land disposal facility owner, operator, or permittee shall submit with the notification required by subdivision (2), the time frames for actions to be taken to repair the breakdown or inoperable weighing scales; and

(4) the solid waste land disposal facility owner, operator, or permittee shall notify the department in writing that the weighing scales are operable after any repair.

(e) A solid waste land disposal facility required to report under section 1(a) of this rule but not required to install and operate weighing scales or a solid waste land disposal facility at which the scales are operating improperly or are temporarily inoperable shall use the most applicable of the following conversion factors to determine the weight of municipal solid waste from the volume of municipal solid waste:

(1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.

(2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste.

(3) One (1) cubic yard of baled solid waste equals one (1) ton of solid waste.

(f) Any solid waste land disposal facility accepting construction/demolition waste or special waste, required to report under section 1(a) of this rule that is not required by subsection (a) to install weighing scales to weigh solid waste, shall use accepted engineering practices, production information, or other methods approved by the department to estimate the weight of these solid waste types received at the solid waste land disposal facility.

(g) Failure to install and operate weighing scales and to notify the department as required by this section constitutes an operational violation under 329 IAC 10-1-2. (*Solid Waste Management Board; 329 IAC 10-14-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1817; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3796*)

Rule 15. Municipal Solid Waste Landfills; Plans and Documentation to be Submitted with Permit Application

329 IAC 10-15-1 General requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) A permit application for a new MSWLF or a lateral expansion must be accompanied by the following plans and documentation:

- (1) Plot plans as specified under section 2 of this rule.
- (2) Cross-sectional drawings and details as specified under section 3 of this rule.
- (3) A hydrogeologic site investigation report as specified under sections 4 and 5 of this rule.
- (4) An operational plan of the proposed MSWLF as specified under section 6 of this rule.
- (5) A CQA/CQC plan as specified under section 7 of this rule.
- (6) Calculations and analyses pertaining to MSWLF design as specified under section 8 of this rule.
- (7) An explosive gas management plan as specified under 329 IAC 10-20-17.
- (8) A closure plan as specified under 329 IAC 10-22-2.
- (9) A post-closure plan, as specified under 329 IAC 10-23-3.
- (10) A quality assurance project plan as specified under 329 IAC 10-21-2(b)(13).
- (11) A sampling and analysis plan as specified under 329 IAC 10-21-2.
- (12) A general description for developing a statistical evaluation plan as required by 329 IAC 10-21-6(c). The description must include a time frame for submitting the statistical evaluation plan.
- (13) If applicable, a baled waste management plan as specified under section 9 of this rule.
- (14) A leak detection plan as specified under section 10 of this rule.
- (15) A leachate collection contingency plan as specified under section 11 of this rule.
- (16) Other plans as may be required by the commissioner.

(b) Plans and documentation that accompany a permit application for a new MSWLF or a lateral expansion must be certified as follows:

(1) The hydrogeologic site investigation report required in subsection (a)(3) must be certified by a certified professional geologist or a qualified ground water scientist, either of whom shall have educational or professional experience in hydrogeology or ground water hydrology.

(2) With the exception of the hydrogeologic site investigation report and the sampling and analysis plan, all plans and documentation required in subsection (a) must be certified by a registered professional engineer.

(c) A full set of plans and documentation required by this section must accompany each of the five (5) copies of the permit application required in 329 IAC 10-11-2.1(c). In addition to the paper copies, a copy of the plans and documentation required by this section may also be submitted on a computer diskette, the type and format of which will be prescribed by the department.

(d) All plans and documentation must be properly titled. (*Solid Waste Management Board; 329 IAC 10-15-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1817; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2760; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3797*)

329 IAC 10-15-2 Plot plan requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Plot plans required by subsections (b) through (d) must:

- (1) use a scale of at least one (1) inch per one hundred (100) feet for a MSWLF of less than eighty (80) acres;
- (2) use a scale of at least one (1) inch per two hundred (200) feet, for a MSWLF of eighty (80) acres to and including one hundred fifty (150) acres;
- (3) use a scale of at least one (1) inch per three hundred (300) feet for an MSWLF greater than one hundred fifty (150) acres;
- (4) include a bar scale on each drawing;
- (5) include elevations that correlate with United States Geological Survey (USGS) mean sea level data;
- (6) include a north arrow; and
- (7) include a map legend.

(b) A permit application for a new MSWLF or a lateral expansion must be accompanied by an existing features plot plan that includes the facility boundary, and the solid waste boundary and indicates the presence or absence of each of the following features within three hundred (300) feet of the facility boundary:

- (1) Location and elevations of all existing boreholes.
- (2) Rock outcroppings.
- (3) Surface water run-off directions.

- (4) Fences.
- (5) Utility easements and rights-of-way.
- (6) Existing structures.
- (7) Benchmark descriptions.
- (8) Surface contours with intervals of no more than:
 - (A) two (2) feet if the MSWLF is less than eighty (80) acres; or
 - (B) five (5) feet if the MSWLF is equal to or greater than eighty (80) acres.
- (9) Real property boundary.
- (c) The proposed final contour plot plan required by subsection (d)(1) must indicate surface contours of the MSWLF and three hundred (300) feet beyond the facility boundary. The contour intervals must be no more than:
 - (1) two (2) feet if the MSWLF is less than eighty (80) acres; or
 - (2) five (5) feet if the MSWLF is equal to or greater than eighty (80) acres.
- (d) A permit application for a new MSWLF or a lateral expansion must be accompanied by plot plans showing the following:
 - (1) Proposed final contours, indicating the following features that would remain after closure:
 - (A) Any buildings.
 - (B) Proposed drainage.
 - (C) Proposed sedimentation and erosion control structures.
 - (D) Proposed vegetation, fencing, and visual screening.
 - (E) Proposed roadways providing access to and around the site that are necessary for post-closure care and monitoring.
 - (F) Proposed berms, flood protection dikes, and surface water diversion structures.
 - (G) Proposed explosive gas monitoring and management system.
 - (H) Proposed solid waste boundary.
 - (I) Proposed monitoring wells.
 - (2) Proposed leachate collection system, indicating the following:
 - (A) Proposed soil liner top contour.
 - (B) Piping layout.
 - (C) Cleanout and riser locations.
 - (D) Sump contours or elevations if applicable.
 - (E) Lift station locations if applicable.
 - (F) Leachate storage areas if applicable.
 - (3) Initial facility development plan and details, indicating the following:
 - (A) Proposed benchmarks.
 - (B) Proposed buildings and on-site transfer.
 - (C) Proposed drainage, including permanent sedimentation and erosion control structures.
 - (D) Proposed explosive gas monitoring and management system.
 - (E) Proposed fencing and visual screening.
 - (F) Proposed on-site roads.
 - (G) Proposed soil liner top contours.
 - (H) On-site borrow area for soil liner material and daily cover if applicable.
 - (4) Operational plot plan indicating the sequence of cell development, and indicating the following:
 - (A) Additional proposed benchmarks if applicable.
 - (B) Additional proposed buildings if applicable.
 - (C) Additional drainage features and permanent erosion and sediment control features.
 - (D) Additional fencing and visual screening.
 - (E) Proposed on-site roads.
 - (F) Direction of fill progression.
- (5) Any other plot plan that may be determined to be required by the commissioner.

(Solid Waste Management Board; 329 IAC 10-15-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1818; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3797)

329 IAC 10-15-3 Cross-sectional drawing and detail requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) A permit application for a new MSWLF or a lateral expansion must be accompanied by a minimum of two (2) intersecting cross-sectional drawings. The drawings must include the following:

- (1) Elevations that correlate with USGS mean sea level data.
- (2) Final construction plan with:
 - (A) horizontal and vertical solid waste boundaries;
 - (B) drainage structures;
 - (C) leachate collection system;
 - (D) explosive gas management system components;
 - (E) proposed depth of the excavation; and
 - (F) other significant features that may adversely affect the facility design.

(b) In addition to the two (2) cross-sectional drawings required in subsection (a), a permit application for a new MSWLF or a lateral expansion must be accompanied by a minimum of two (2) geological cross-sections. The two (2) geological cross-sections must intersect, and the locations of the sections indicated on the existing feature plan or the piezometric contour map. Each geologic cross-sectional drawing must have horizontal and vertical bar scales and depict the following:

- (1) The types of soil materials or rock strata, as identified by boring logs, from the ground surface to the required boring depth.
- (2) Present topography (mean sea level elevations).
- (3) Uppermost aquifer and all significant zones of saturation.
- (4) Any vertical components of ground water flow based on information contained in the hydrogeologic site investigation report for the uppermost aquifer and all significant zones of saturation.
- (5) All boring locations along the transect used to prepare the cross section.
- (6) Proposed horizontal solid waste boundary.
- (7) The base of the liner system or if required any leak detection system and the top of the protective system.
- (8) Direction of cross-sectional traverse.
- (9) Proposed depth of excavation if it differs from that in subdivision (7).
- (10) The original grade, if available.

(c) A permit application for a new MSWLF or a lateral expansion must be accompanied by detail drawings that are cross-sectional of the:

- (1) liner system;
- (2) geosynthetic anchor trenches if applicable;
- (3) final cover system;
- (4) drainage structures;
- (5) permanent sedimentation and erosion control structures;
- (6) leachate collection system, including:
 - (A) subgrade elevation;
 - (B) piping;
 - (C) cleanout location;
 - (D) drainage features and structures;
 - (E) sump, risers, and manholes; and
 - (F) lift station elevations if applicable;
- (7) explosive gas monitoring and management system;
- (8) on-site roads;
- (9) monitoring well construction; and
- (10) any other site specific construction details that may adversely affect the facility plan.

(Solid Waste Management Board; 329 IAC 10-15-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1819; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2760; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3798)

329 IAC 10-15-4 Hydrogeologic site investigation report

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 4. (a) A permit application for a new MSWLF or a lateral expansion must be accompanied by a written hydrogeologic site investigation report that must describe the regional and site specific hydrogeology and must, at a minimum, include sufficient hydrogeologic information to allow the commissioner to do the following:

- (1) Determine the suitability of the site for solid waste disposal.
- (2) Identify and characterize:
 - (A) the hydrogeology of the uppermost aquifer system;
 - (B) all geologic strata that exist above the uppermost aquifer system; and
 - (C) the geologic strata defining the lower boundary of the uppermost aquifer.
- (3) Characterize the site geology to allow for the evaluation of the proposed design of the proposed MSWLF unit and to ensure

that it will be in compliance with the requirements of 329 IAC 10-16-9 and 329 IAC 10-17-2.

(4) Determine the hydrogeologic conditions and the relationship to the proposed MSWLF unit in order to predict pollutant movement in the event of releases from the proposed MSWLF unit.

(5) Determine the adequacy of the proposed monitoring well system to provide early detection by intercepting ground water contaminated by leachate from the proposed MSWLF unit.

(b) The hydrogeological site investigation report must include a description, based on publicly available information, of the regional hydrogeology of the proposed MSWLF unit. The report must include the following information pertaining to regional hydrogeology:

(1) Demonstration of how the regional hydrogeology relates to the following:

(A) The on-site hydrogeologic conditions.

(B) The location of nearby sensitive environments.

(2) Identification of the regional aquifer and aquifer of significance.

(3) Well logs of public and private water supply wells within one (1) mile of the proposed solid waste boundary as available through the division of water files of the department of natural resources or through other publicly accessible sources. If well logs from a dwelling or from an occupied building located within one-fourth (1/4) mile of the proposed solid waste boundary are not publicly available, a summary of results from a survey conducted as required under 329 IAC 10-11-2.5(a)(12) must be submitted in substitution for those well logs.

(4) Average yield of water supply wells located within one (1) mile of the proposed solid waste boundary, as determined from well logs on file with the department of natural resources or from other publicly available information.

(5) Direction of ground water flow in the regional aquifer and aquifer of significance.

(6) Identification of recharge and discharge areas of the regional aquifer and aquifer of significance.

(7) Identification of any public water supply system wells within ten (10) miles of the proposed solid waste boundary.

(8) Determination of the regional aquifer and aquifer of significance as a confined aquifer or an unconfined aquifer.

(9) Identification of aquitard or aquitards and aquiclude or aquicludes.

(10) A discussion of regional geologic conditions that must include available and appropriate information to describe the following:

(A) Bedrock stratigraphy, represented on maps and columnar diagrams, constructed from field exposures and the geologic literature, describing:

(i) formation and member names;

(ii) geologic ages;

(iii) rock types;

(iv) thicknesses;

(v) the proposed MSWLF unit's mineralogic and geochemical compositions and variabilities;

(vi) rock fabrics;

(vii) porosities and bulk permeabilities, including karst development;

(viii) orientation, density, and spacing of joints; and

(ix) other pertinent features.

(B) Glacial geology, including a discussion of:

(i) the formation, stages, and distribution of glacial deposits; and

(ii) hydrologic characteristics of the surficial deposits, including kames, eskers, and outwash plains.

(11) Structural geology, including a description of local and regional structural features.

(12) Description of the regional geomorphology, surface water, and ground water hydrologic features, including the following:

(A) Surface water drainage patterns.

(B) Wetlands.

(C) The location of surface water bodies.

(D) Floodways.

(E) Floodplain.

(F) An analysis of any topographic features that may influence the ground water flow system.

(c) The hydrogeological site investigation report must include a description of the site-specific hydrogeology of the proposed MSWLF unit. The site-specific report must include results of field and laboratory investigations that are performed to do the following:

(1) Define physical site characteristics, including soils, unconsolidated and consolidated stratigraphy, and ground water.

(2) Describe and characterize the ground water quality of the uppermost aquifer system and all significant zones of saturation above the uppermost aquifer system. This report must:

(A) include a description and the source of any ground water contamination located under the site; and

(B) report data gathered by sampling and analyzing the ground water at least one (1) time from the uppermost aquifer system and all significant zones of saturation above the uppermost aquifer system for, at a minimum, the constituents

of Table 1A in 329 IAC 10-21-15(a) and Table 1B in 329 IAC 10-21-15(b).

(d) The description of the site-specific hydrogeology must be based on investigations that satisfy, at a minimum, the following requirements:

(1) Boreholes and piezometers must be of sufficient numbers to adequately define the soil, pertinent geologic strata, and ground water conditions at the site and must be in accordance with the following:

(A) There must be at least one (1) borehole and one (1) piezometer for every five (5) acres of solid waste disposal area, with a minimum of five (5) boreholes and five (5) piezometers at any site.

(B) The boreholes must be evenly distributed across the study area and located such that there is one (1) borehole and one (1) piezometer in each major topographic feature, excluding areas inaccessible to drilling equipment, but including the following:

- (i) Ridges.
- (ii) Knolls.
- (iii) Depressions.
- (iv) Drainage swales.

(C) Boreholes must be extended at least ten (10) feet below the confining unit defining the lower boundary of the uppermost aquifer or twenty (20) feet into the confining unit, whichever is less.

(D) Boreholes may be converted to piezometers to comply with the requirements of this subdivision.

(2) Additional boreholes and piezometers, not necessarily meeting the requirements in subdivision (1), may be required by the commissioner to delineate the boundaries of any other features pertinent to the proposed MSWLF unit's design.

(3) The screened interval of piezometers and monitoring wells must not exceed ten (10) feet in length.

(4) Diagrammatic drilling logs must be recorded for all boreholes and all piezometers, and each log must be of similar scale and include the following:

- (A) Borehole identification number.
- (B) Date of drilling.
- (C) Method of drilling.
- (D) Borehole diameter.
- (E) Method of sampling.
- (F) Drilling muds and fluids used.
- (G) Penetration measurements, such as hammer blow counts, penetrometer measurements, or other acceptable penetration measurements.
- (H) Sample recovery measured in tenths of a foot.
- (I) Textural classification and descriptions for the entire depth of each borehole and each piezometer.
- (J) Interval of continuous samples and soil test data.
- (K) The depths to, and thickness of, any water bearing zones.
- (L) Water level measurements with dates and times of measurements indicated.
- (M) The surveyed elevation at the ground surface to the nearest plus or minus one-tenth (± 0.1) foot, relative to the National Geodetic Vertical Datum (NGVD), at each borehole and each piezometer. The elevation of the referenced mark located on top of the casing of each ground water monitoring well and piezometer must be surveyed to the nearest plus or minus one-hundredth (± 0.01) foot. The referenced mark must be used to measure static water levels.
- (N) Horizontal position of each borehole and piezometer using the Universal Transverse Mercator (UTM) system or a site grid coordinate system that can easily be translated into the UTM system. The horizontal position must be surveyed to an accuracy of thirty (30) centimeters.
- (O) Total borehole depth and elevation.

(5) Drilling logs of unconsolidated material must describe the following:

(A) Texture, using the United States Department of Agriculture (USDA) textural classification. Grain-size divisions shall be based on a modified form of the Wentworth grain-size scale defined under 329 IAC 10-2-206.3. A determination shall be made of the percentage and grades of coarse fragments greater than two (2) millimeters in size based on 329 IAC 10-2-206.3 in addition to the USDA textural classification.

(B) Lithological description.

(C) Color as referenced from soil color charts, such as Munsell soil charts.

(D) Reaction (effervescence) to dilute ten percent (10%) cold hydrochloric acid (HCL).

(E) Soil structure.

(F) Sedimentary features, such as the following:

- (i) Bedding or lamination.
- (ii) Cross-stratification.
- (iii) Deformation in bedding.
- (iv) Bedding surface structures.

- (v) Fossils and biturbation.
 - (G) Consistence.
 - (H) Field moisture.
 - (I) Boundary or contact.
 - (J) Zones of secondary porosity, such as the following:
 - (i) Channels of various origins.
 - (ii) Fractures or soil structure units.
 - (iii) Bedding planes or laminations.
 - (iv) Pores (interstices).
- (6) Drilling logs of consolidated material must describe the following:
- (A) Lithology and sedimentology.
 - (B) Mineralogy.
 - (C) Degree of cementation.
 - (D) Color as referenced from soil color charts, such as the Munsell soil charts.
 - (E) Grain size.
 - (F) Any other physical characteristics of the rock, such as scent, staining, fracturing, and solution features.
 - (G) Percent recovery and rock quality designation.
 - (H) Other primary and secondary features.
 - (I) Drilling observations and appropriate details required for unconsolidated drilling logs.
 - (J) A clear and labelled photograph of all labelled cores must be taken and submitted with the drilling logs. The photograph labelling must include the following information:
 - (i) Date photograph was taken.
 - (ii) Sample interval.
 - (iii) Reference scale.
 - (iv) Reference color scale.
 - (v) Identification of borehole.
- (7) The diagrammatical construction details of each piezometer must be recorded on the logs and include the following:
- (A) Piezometer identification number and UTM coordinates.
 - (B) Elevation of the top of the piezometer casing.
 - (C) Height of piezometer casing above the ground.
 - (D) Elevation of the ground surface.
 - (E) Elevation and depth to the bottom of the borehole.
 - (F) Diameter of piezometer casing and borehole.
 - (G) Elevation and depth to the bottom and top of the piezometer screen.
 - (H) Length of piezometer casing.
 - (I) Composition of piezometer casing materials and piezometer screen material.
 - (J) Length of piezometer screen.
 - (K) Screen slot size.
 - (L) Type of joints or couplings, or both, between casing segments.
 - (M) Elevation and depth to the top and bottom of the gravel filter pack surrounding the piezometer screen.
 - (N) Length of the gravel filter pack.
 - (O) Elevation and depth of the bottom of the piezometer casing.
 - (P) Elevation and depth of the top and bottom of the seal above the gravel filter pack.
 - (Q) The grain size and composition of all filter pack materials and the fifty percent (50%) retained size of the formation material used to determine filter pack materials.
 - (R) Thickness of the seal above the gravel filter pack.
 - (S) Elevation and depth of the annular seal above the gravel filter pack seal.
 - (T) Thickness of the annular seal.
 - (U) Material used for the annular seal.
 - (V) Method of installation of the annular seal.
 - (W) The composition and design of the surface seal.
- (8) Samples of unconsolidated and consolidated material must be taken on a continuous basis. For piezometer clusters, continuous samples must be collected from the surface to the base of the deepest piezometer. Other piezometers in the cluster must be sampled at all significant stratigraphic changes and at the screened interval. Samples of different significant stratum must not be combined into composites for textural classification or testing.
- (9) United States Department of Agriculture (USDA) textural classification must be utilized for describing unconsolidated samples. Grain-size divisions shall be based on a modified form of the Wentworth grain-size scale defined under 329 IAC 10-

2-206.3. A determination shall be made of the percentage and grades of coarse fragments greater than two (2) millimeters in size based on 329 IAC 10-2-206.3 in addition to the USDA textural classification. Rock cores or samples must be described and classified using accepted geologic classification systems and nomenclature. A clear description of the classification system used must be included with the logs.

(10) Complete grain size analysis, including sieve or hydrometer, or both, as appropriate to the soil type, must be performed on a representative sample from each significant stratum encountered in each borehole for unconsolidated samples.

(11) A minimum of three (3) laboratory hydraulic conductivity tests must be conducted for each significant stratum identified beneath the site when samples can be obtained with minimal disturbance. Representative samples must be taken from different boreholes and elevations within each significant stratum. Samples must not be recompacted, and disturbances to samples must be minimized. If samples cannot be obtained with minimal disturbance, the commissioner must be contacted so that a program can be developed so alternative tests can be used to obtain the hydraulic conductivity of the sample.

(12) Hydraulic conductivity of the uppermost aquifer and any significant zones of saturation that exist above the uppermost aquifer system must be determined. In situ hydraulic conductivity testing must be done in all piezometers and all monitoring wells. The testing method used must not introduce contaminants into the well. Hydraulic conductivities may be determined using pump tests, slug tests, packer tests, tracer studies, isotopic geochemistry, thermal detection, or other suitable methods as approved by the commissioner.

(13) Vertical hydraulic gradients of the uppermost aquifer and of any aquifers below the site that are hydraulically connected to the uppermost aquifer must be measured at a minimum of three (3) separate locations at the site. Additional nested piezometers or wells may be required by the commissioner to adequately determine vertical components.

(14) Cation exchange capacity and Atterberg limits tests must be performed on a representative sample from each significant stratum encountered in each borehole in which a piezometer or monitoring well is to be installed. These tests may be waived for a sample if it is demonstrated that the sample is not conducive to these tests.

(e) The commissioner may vary the minimum requirements described under subsection (d) where alternate testing methods provide comparable information.

(f) All testing and sampling procedures must be identified and all results identified with respect to the borehole and piezometer and depth.

(g) Borehole and piezometer samples collected must be retained in labeled containers or core boxes. All samples must be securely stored and accessible for seven (7) years after issuance of the permit. The location of the storage area must be designated.

(h) All boreholes, including boreholes that are not converted into piezometers or monitoring wells, and other holes that may cause or facilitate contamination of ground water must be permanently sealed in accordance with the following standards:

(1) If not sealed immediately, the borehole must be covered to prevent injury to people or animals.

(2) All boreholes and piezometers no longer intended for use must be sealed with neat cement, bentonite, or other materials approved by the commissioner to prevent the creation of a pathway for contaminants to migrate.

(3) An accurate record of the sealing materials and procedures must be submitted along with the drilling logs to the commissioner.

(i) Ground water monitoring wells installed, replaced, or converted from piezometers after the effective date of this article, must comply with the following:

(1) All ground water monitoring wells installed after the effective date of this article must comply with the requirements of 329 IAC 10-21-4.

(2) Any piezometers redesigned as monitoring wells after the effective date of this article must meet the requirements of 329 IAC 10-21-4.

(3) Except for ground water monitoring wells that are destroyed, or fail to function properly as described in 329 IAC 10-21-1(g), or that must be abandoned or replaced in accordance with 329 IAC 10-21-1(h), any monitoring well approved under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, may continue to be used for ground water monitoring.

(4) Replacement wells must meet the design requirements of 329 IAC 10-21-4, except for replacement wells under subdivision (5).

(5) Replacement wells constructed within fifteen (15) feet of the original well may have soil sampling and soil sample testing requirements waived if:

(A) the original well complies with 329 IAC 10-21-4; and

(B) the waiver is approved by the commissioner.

(j) Based on data collected from boreholes, piezometers, and ground water samples, the site-specific hydrogeologic investigation report must provide the following:

(1) Sufficient data to specify the location for ground water monitoring wells.

(2) Sufficient data to form the basis for contingency plans regarding ground water and surface water contamination.

(3) Sufficient data to support the engineering design of the landfill.

(4) Maps, cross sections, and other graphical representations.

- (5) An analysis of potential impacts on ground water quality, surface water quality, and water users in the event of a release from the MSWLF, including projected paths and rates of movement of both water-soluble and low-solubility components of leachate.
- (6) Sufficient information to characterize the site geology to allow for the evaluation of the proposed design's compliance with 329 IAC 10-16-9 and 329 IAC 10-17-2.
- (7) Detailed descriptions of the following:
- (A) Site geology.
 - (B) Surface water and ground water flow.
 - (C) The relationship of site-specific conditions to the regional geology.
 - (D) The potential impact the proposed MSWLF unit or may have on surface and ground water resources and other receptors, including future hydrogeologic conditions, that may occur with site development.
 - (E) Hydrogeologic conditions in sufficient detail to construct a comprehensive understanding of ground water flow.
 - (F) The consolidated and unconsolidated stratigraphic units from the ground surface down through the materials comprising the confining unit defining the lower boundary of the uppermost aquifer system, including the following:
 - (i) Sedimentary composition, including, for unconsolidated formations:
 - (AA) textural classification;
 - (BB) grain size distribution (sieve and hydrometer curves);
 - (CC) hydraulic conductivity;
 - (DD) porosity;
 - (EE) effective porosity;
 - (FF) transmissivity and storativity; and
 - (GG) cation exchange capacity and Atterberg limits tests must be performed on a representative sample from each significant stratum encountered in each borehole in which a piezometer or monitoring well is to be installed. These tests may be waived for a sample if it is demonstrated that the sample is not conducive to these tests.
 - (ii) Thickness.
 - (iii) Lateral extent.
 - (G) The geomorphology at the proposed MSWLF unit.
 - (H) The structural geology under the proposed MSWLF unit.
 - (I) The uppermost aquifer system and all significant zones of saturation above the uppermost aquifer system, including the following:
 - (i) The depth to, and lateral and vertical extent of, the uppermost aquifer system and all significant zones of saturation above the uppermost aquifer system.
 - (ii) Temporal fluctuations in ground water levels and the effects on ground water flow direction.
 - (iii) An interpretation of the ground water flow system, described in both narrative and map form, that includes the following:
 - (AA) Rate of flow.
 - (BB) Direction of flow.
 - (CC) Vertical and lateral components of flow.
 - (DD) Interconnections between and within the uppermost aquifer system and any significant zones of saturation above the uppermost aquifer system.
 - (EE) Ground water table maps or potentiometric surface maps, or both, of the proposed site, including ground water flow directions. Monthly water level measurements over a period of at least six (6) months must be submitted to the commissioner prior to operation of the proposed MSWLF or lateral expansion along with ground water table/potentiometric surface maps constructed from each measurement event.
 - (FF) Cross-sectional representations of equipotential lines and ground water flow direction that adequately represent the horizontal and vertical flow directions beneath the site. Where appropriate, this information may be illustrated on the geologic cross sections.
 - (iv) Identification and characterization of recharge and discharge areas within the boundaries of the proposed MSWLF unit, including any relationships of ground water with seeps, springs, streams, and other surface water features.
 - (v) Characterization of the vertical and horizontal hydraulic conductivity of the uppermost aquifer system and all strata within the zone of saturation above the uppermost aquifer system.
 - (vi) Other information necessary to completely describe the uppermost aquifer system and all significant zones of saturation above the uppermost aquifer.

(Solid Waste Management Board; 329 IAC 10-15-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1819; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2761; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3799)

329 IAC 10-15-5 Description of proposed monitoring well system

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 5. (a) The hydrogeologic site investigation report that accompanies permit applications for new MSWLFs and lateral expansions must contain a description of the proposed monitoring well system that, at a minimum, includes the following information:

- (1) Monitoring point locations, design, and installation procedures. Installation procedures must comply with 329 IAC 10-21-4.
- (2) A thorough evaluation of the suitability of any existing monitoring points proposed for inclusion in the monitoring well system.
- (3) An explanation of how the proposed monitoring well system addresses the hydrogeologic conditions identified within the uppermost aquifer system and any significant zones of saturation that exist above the uppermost aquifer system.
- (4) A description of how and where ground water monitoring wells will be installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer and any significant zones of saturation that exist above the uppermost aquifer system. Ground water samples must represent both the quality of background ground water quality that has not been affected by the proposed MSWLF unit and ground water quality passing the monitoring boundary of the proposed MSWLF unit.
- (5) A description of how upgradient wells will monitor the same hydrologic units as the downgradient monitoring wells.
- (6) If a single monitoring well cannot adequately intercept and monitor the vertical extent of a potential pathway of contaminant migration at a sampling location, a description of how a well cluster will be installed.
- (7) For the uppermost aquifer system, a description of how ground water monitoring well spacing will not exceed five hundred (500) feet along the monitoring boundary of the proposed MSWLF unit. In geologically complex environments as determined by the commissioner, closer well spacing may be required. Alternate spacing of ground water monitoring wells must be approved by the commissioner. Well spacing must provide at least two (2) upgradient and four (4) downgradient monitoring wells or well clusters within the uppermost aquifer system and any significant zones of saturation that exist above the uppermost aquifer system. An alternate number of upgradient wells must be approved by the commissioner.

(b) The commissioner may consider an individual compliance monitoring well system for intrawell statistical comparison methods if the permittee can demonstrate either of the following:

- (1) The uppermost aquifer system, and any significant zones of saturation that exist above the uppermost aquifer system are discontinuous.
- (2) Significant spatial variability exists within the aquifer.

(Solid Waste Management Board; 329 IAC 10-15-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1823; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2765; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3804)

329 IAC 10-15-6 Operational plan

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 6. A permit application for a new MSWLF or a lateral expansion must be accompanied by an operational plan in the form of a narrative that describes the proposed MSWLF or lateral expansion. Each narrative must include information on the following:

- (1) Anticipated quantity, types, and sources of solid waste to be deposited.
- (2) Equipment to be used for placement and compaction of all solid waste, excavation of soil, movement of stockpiled soils, and application of cover soil.
- (3) Procedures to control fugitive dust in accordance with the applicable fugitive dust rules in 326 IAC 6-4.
- (4) Sanitary facilities.
- (5) A description of the access control to be used.
- (6) A description of the safety equipment to be used.
- (7) The distances from the site to the nearest dwelling, factory, and offices.
- (8) A description of the location, amount, and depth of excavation that will occur at the site.
- (9) A description of the supervision that will occur at the site.
- (10) A description of the base flood at the site and whether the site is in the floodway.
- (11) Proposed hours of operation.
- (12) The development and progression of the MSWLF or lateral expansion as illustrated in the plot plan required under section 2 of this rule.
- (13) The quantities of available and necessary cover soil. If cover material is to be obtained from a location other than the site of the proposed MSWLF or lateral expansion, the material's source, quantity, type, and characteristics must be identified.
- (14) Winter and inclement weather operating procedures, to include methods for obtaining and applying cover soil.

- (15) A description of protective barriers, leachate, and methane control that includes the following:
 - (A) Source and type of material utilized.
 - (B) Method and specifications of construction.
 - (C) Testing for construction quality control (CQC) and reviews for construction quality assurance (CQA) that will be made part of the reference information contained in the construction contract documents.
- (16) A description of the sign or signs proposed for the site, as required under 329 IAC 10-20-3.
- (17) Procedures for the disposal of bulky solid waste such as refrigerators, stoves, fence wire, and other similar items.
- (18) Procedures for controlling or handling windblown materials.
- (19) Procedures to be used to prevent and extinguish fires.
- (20) Details of salvage operations, if planned, indicating how the salvage operation will comply with 329 IAC 10-20-6.
- (21) Facilities for personnel and equipment.
- (22) Storage, treatment, and disposal methods for leachate.
- (23) Run-on and run-off control system as specified in 329 IAC 10-20-11.
- (24) Erosion and sedimentation control measures as specified in 329 IAC 10-20-12.

(Solid Waste Management Board; 329 IAC 10-15-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1824; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2766; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3804)

329 IAC 10-15-7 CQA/CQC plan and requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) The proposed MSWLF's or lateral expansion's CQA/CQC plan must address the following:

- (1) The observations and tests that will be used before, during, and upon completion of construction to ensure that the construction materials will meet the design criteria and specification required in 329 IAC 10-17.
- (2) The procedures to ensure that the post construction care requirements will be maintained prior to initial operation.
- (3) A delineation of the responsibilities and authorities for CQA/CQC management, including the following:
 - (A) The responsibilities and authorities of the various personnel involved in preparing the permit application and designing and constructing the proposed MSWLF or lateral expansion so as to allow for effective lines of communication to facilitate proper and responsible decision making during the construction.
 - (B) A specific chain of command for the CQA/CQC inspectors.
- (4) The preconstruction meeting to be held upon award of the construction contract as described under 329 IAC 10-17-18.
- (5) A description of the required level of experience and training for the contractor, crew, and CQA/CQC inspectors for every major phase of construction in detail to demonstrate to the commissioner that the installation methods and procedures required in 329 IAC 10-17 will be properly implemented.
- (6) A description of all field observation, tests, equipment, and calibration procedures for field testing equipment that will be used to ensure that the construction and installation meets or exceeds all design criteria as required in 329 IAC 10-17 and the approved construction plans.
- (7) Descriptions of all sampling, protocols, sample size, and methods for determining sample location, and frequency of sampling.
- (8) Laboratory procedures and the calibration of laboratory equipment that will be used for sample analysis, and the appropriate acceptance and rejection criteria pertaining to the laboratory results.
- (9) The reporting requirements for CQA/CQC activities must be described in detail.
- (b) Record keeping and reporting requirements for CQA/CQC include the following:
 - (1) The daily summary reports, inspection data sheets, problem identification and corrective measures reports, acceptance reports, and final documentation must be retained in MSWLF records.
 - (2) The information from daily progress meetings and problem/work deficiency meetings content documentation must be retained in MSWLF records.
- (3) All documentation must be provided in the construction certification report, as specified in 329 IAC 10-19.

(Solid Waste Management Board; 329 IAC 10-15-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1825; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2766; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3805)

329 IAC 10-15-8 Calculations and analyses pertaining to landfill design

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 8. (a) The applicant shall provide calculations and analyses pertaining to the design of the proposed MSWLF unit, if applicable, and if necessary as determined by the commissioner, to indicate that the proposed design complies with the design

requirements of 329 IAC 10-17. Any required calculations must be accompanied by a discussion of methods, assumptions, and the references used. Calculations that may be required include the following:

- (1) A transmissivity calculation, or an assessment based on the maximum compressive load placed above the geosynthetic, using a minimum safety factor of ten (10), when a geosynthetic material is used for the drainage layer. In addition, the long term creep impact on the transmissivity of the geosynthetic must be evaluated using a minimum safety factor of five (5).
- (2) A permitivity calculation using a minimum factor of safety of fifty (50), when a geosynthetic material is used for the drainage layer.
- (3) A filter-retention calculation, when a geosynthetic material is used for the drainage layer.
- (4) A tensile stresses calculation to evaluate stresses generated during the construction and operation of the interior of the side slope of the proposed MSWLF unit. A minimum safety factor of five (5) on yield is required.
- (5) A strain-settlement calculation to evaluate the ability of the geosynthetic layer to resist down-drag forces resulting from the subsidence of the contained waste. A minimum ultimate safety factor of one and one-half (1.5) on ultimate stress is required.
- (6) A filter-clogging calculation to evaluate the influence of retained soil particles on the permitivity of a geotextile or geonet. Also, a gradient ratio test or a hydraulic conductivity ratio test, as appropriate, must be performed in accordance with test standards specified in 329 IAC 10-17-17.
- (7) A localized subsidence calculation, if applicable, to evaluate the strains induced in the geomembrane used for the liner system and for final cover.
- (8) A stability of final cover calculation to evaluate the likelihood and extent to which final cover components may slide with respect to each other. A minimum safety factor of one and three-tenths (1.3) is required.
- (9) A geomembrane anchor calculation to evaluate the anchoring capacity and stresses in a geomembrane. A minimum safety factor of one and two-tenths (1.2) is required.
- (10) A settlement potential calculation to estimate the total and differential settlement of the foundation soil due to stresses imposed by the liner system, in-place waste, daily cover, intermediate cover, equipment usage, and final cover.
- (11) A bearing capacity and stability calculation to estimate the load bearing capacity and slope stability of the foundation soil during construction. A minimum safety factor of two (2.0) is required for a static condition.
- (12) A bottom heave and blow-out calculation to estimate the potential for a bottom heave or blow-out due to unequal hydrostatic or gas pressure.
- (13) A waste settlement analysis to assess the potential for the final cover system to stretch due to total and differential settlement of the solid waste. If there is a lack of documented settlement of the solid waste, a value of approximately seven percent (7%) to fifteen percent (15%) of the solid waste height may be used for this calculation.
- (14) A wind uplift force calculation to provide an indication that wind uplift will not damage the geomembrane during installation.
- (15) A wheel loading calculation to indicate that the amount of wheel loading of construction equipment will not damage the liner system.
- (16) A puncture of geomembrane calculation to indicate that the amount of down drag force induced by the leachate collection sumps and manhole with vertical standpipe settlement will not cause failure of the underlying liner system. A minimum safety factor of two (2.0) on tensile strength at yield is required.
- (17) An erosion calculation to indicate that the erosion rate will not exceed five (5) tons per acre per year, as is required under 329 IAC 10-22-7(c)(3).
- (18) Pipe calculations to assess the leachate collection piping for deflection, buckling, and crushing.
- (19) If applicable, or if required under 329 IAC 10-16-5(b), an analysis of the effect of seismic activity on the structural components of the landfill.
- (20) A peak flow calculation to identify surface water flow expected from a twenty-five (25) year storm.
- (21) A calculation to identify the total run-off volume expected to result from a twenty-four (24) hour, twenty-five (25) year storm event.
- (22) A chemical resistance evaluation to demonstrate that the leachate collection and removal system components are chemically resistant to the waste and the leachate expected to be generated.
- (23) A clogging evaluation to demonstrate that the system as designed will be resistant to clogging throughout the active life and post-closure period of the MSWLF.
- (24) A slope stability analysis that follows the requirements outlined in Table 1 of this subdivision. Any geosynthetic materials installed on landfill slopes must be designed to withstand the calculated tensile forces acting upon the geosynthetic materials. The design must consider the minimum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface.

TABLE 1
Minimum Values of Safety Factors for
Slope Stability Analyses

Consequences of Slope Failure	Uncertainty of Strength Measurements	
	Small ¹	Large ²
No imminent danger to human life or major environmental impact if slope fails	1.25 (1.2)*	1.5 (1.3)*
Imminent danger to human life or major environmental impact if slope fails	1.5 (1.3)*	2.0 or greater (1.7 or greater)*

¹The uncertainty of the strength measurements is smallest when the soil conditions are uniform and high quality strength test data provide a consistent, complete, and logical picture of the strength characteristics.

²The uncertainty of the strength measurements is greatest when the soil conditions are complex and when the available strength data do not provide a consistent, complete, and logical picture of strength characteristics.

*Numbers without parentheses apply for static conditions and those within parentheses apply to seismic conditions.

(25) Any additional calculation determined by the commissioner to be necessary to ascertain whether the proposed design complies with the requirements of this article.

(b) Test standards for MSWLF liner systems are listed in 329 IAC 10-17-17. (*Solid Waste Management Board; 329 IAC 10-15-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1825; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2767; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3806*)

329 IAC 10-15-9 Baled waste management plan

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 9. A baled waste management plan, submitted as required under section 1(a)(13) of this rule must describe the following:

- (1) How ventilation of the waste delivery vehicle will be addressed prior to the removal of the baled waste for disposal.
- (2) Protective measures to be taken and equipment to be worn by the workers unloading the bales from the vehicle.
- (3) Equipment to be utilized in unloading bales.
- (4) Procedures for unloading and disposing of baled waste.

(*Solid Waste Management Board; 329 IAC 10-15-9; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2768; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939*)

329 IAC 10-15-10 Leak detection plan

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 10. The owner, operator, or permittee must develop and implement a program to detect and assess liquids that have leaked through the liner system into the leak detection zone. The program must be based on a leak detection plan submitted for approval to the commissioner at the time of permit application in accordance with section 1(a)(14) of this rule. The leak detection plan must include the following information:

- (1) The quantity of liquids, in gallons per acre per day, expected to be collected from the leak detection zone of the liner system throughout the active life, closure, and post-closure periods.
- (2) The expected rate of change in liquid quantity collected from the leak detection zone of the liner system.
- (3) The expected nature of the liquids with regard to:
 - (A) the chemical constituents;
 - (B) the range in concentration of constituents;
 - (C) the range in pH of the liquids; and
 - (D) any other information necessary to characterize the liquids, as determined by the commissioner.
- (4) The frequency with which the owner, operator, or permittee will collect and analyze samples from the leak detection zone of the liner system throughout the active life, closure, and post-closure periods. Collection and analysis of samples from the leak detection zone must be done at least semiannually.
- (5) A proposed action leakage rate. The proposed action leakage rate must not exceed the maximum design flow rate that the leak detection zone can transmit so that the fluid head does not exceed one (1) foot. The action leakage rate must include a minimum factor safety of two (2) to allow for:
 - (A) uncertainties in the design, construction, and operation of the liner system; and
 - (B) uncertainties in the likelihood, amounts, and sources of other liquids entering the leak detection zone.

(*Solid Waste Management Board; 329 IAC 10-15-10; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2768; errata filed Jun 10, 1998, 9:23*)

a.m.: 21 IR 3939)

329 IAC 10-15-11 Leachate contingency plan

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 11. The permit application for a new MSWLF or a lateral expansion must be accompanied by a leachate contingency plan. At a minimum, the following items must be addressed:

- (1) A list and description of the procedures to be used to monitor the leachate level in the sump area, manhole, or vertical riser.
- (2) A list and description of the procedures to be used for routine maintenance. The routine maintenance may be daily, weekly, quarterly, or annually, as applicable.
- (3) A list and description of the expected potential cause of leachate level exceedance. Potential cause may include the following:
 - (A) Temporary shut down of pretreatment.
 - (B) Loss of authorization of discharge leachate to the treatment plant.
 - (C) Blockage in the leachate collection or leachate removal system.
 - (D) An inoperable sump pump.
 - (E) Heavy rainfall.
 - (F) Natural disasters.

- (4) Describe the corrective measure that will be implemented when the leachate level is exceeded.

(Solid Waste Management Board; 329 IAC 10-15-11; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3807)

Rule 16. Municipal Solid Waste Landfills; Location Restrictions

329 IAC 10-16-1 Airport siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) This section applies to:

- (1) permit applications under this article for new MSWLFs and lateral expansions; or
- (2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.
- (b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article must not locate a proposed MSWLF unit within ten thousand (10,000) feet of any airport runway end used by turbojet aircraft or within five thousand (5,000) feet of any airport runway end used by only piston-type aircraft unless the permit application includes a demonstration that the proposed MSWLF unit is designed and operated so as not to pose a bird hazard to aircraft.
- (c) Permittees of MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, located within ten thousand (10,000) feet of any airport runway end used by turbojet aircraft or within five thousand (5,000) feet of any airport runway end used by only piston-type aircraft must complete the following:
 - (1) A demonstration that any MSWLF unit within the MSWLF is designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.
 - (2) Provide a copy of the demonstration to the commissioner.
 - (3) Provide a copy of the demonstration to the affected airport.
 - (d) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article or permittees of MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must complete the following if any proposed or existing MSWLF unit within the MSWLF is located within a five (5) mile radius of any airport runway end used by turbojet or piston-type aircraft:
 - (1) Notification to the affected airport and the Federal Aviation Administration (FAA) of the intent to site a solid waste land disposal facility.
 - (2) If a demonstration is required by this section, provide a copy of the demonstration to the affected airport.
 - (e) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration. (Solid Waste Management Board; 329 IAC 10-16-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1826; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2769; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3807)

329 IAC 10-16-2 Flood plain and floodway siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. (a) This section applies to:

- (1) permit applications under this article for new MSWLFs and lateral expansions; or
- (2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article or MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not locate any MSWLF unit within the MSWLFs in either of the following:

- (1) A one hundred (100) year flood plain, unless the applicant demonstrates that the MSWLF unit:
 - (A) will not restrict the flow of the one hundred (100) year flood;
 - (B) will not reduce the temporary water storage capacity of the flood plain;
 - (C) is constructed with a dike that:
 - (i) prevents washout of solid waste;
 - (ii) has a top elevation not less than three (3) feet above the base flood elevation; and
 - (iii) meets the requirements of subsection (c).

(2) A floodway:

- (A) with drainage areas greater than one (1) square mile, without the approval of the department of natural resources;
- or
- (B) with drainage areas less than or equal to one (1) square mile without provisions to prevent the washout of municipal solid waste.

(c) A dike constructed as a requirement of this section must be owned by the owner of the MSWLF or the owner must submit to the commissioner a signed written agreement with the owner of the dike that is required by this section, which will allow the MSWLF owner, operator, or permittee to monitor and maintain the dike during the life of the MSWLF and post-closure period. *(Solid Waste Management Board; 329 IAC 10-16-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1827; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2769; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3808)*

329 IAC 10-16-3 Wetlands siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) This section applies to:

- (1) permit applications under this article for new MSWLFs and lateral expansions; or
- (2) new MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article, and new MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not:

- (1) locate any MSWLF unit within the MSWLF in violation of Section 404 of the Clean Water Act (33 U.S.C. 1344 as amended February 4, 1987);
- (2) cause or contribute to violations of the Section 401 water quality certification of the Clean Water Act (33 U.S.C. 1341 as amended December 27, 1977); and
- (3) dredge and fill wetlands under the Clean Water Act (33 U.S.C. 1344 as amended February 4, 1987) without an appropriate permit.

(Solid Waste Management Board; 329 IAC 10-16-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1827; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2770; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3808)

329 IAC 10-16-4 Fault area siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 4. (a) This section applies to permit applications under this article for new MSWLFs and lateral expansions.

(b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article must not locate any MSWLF unit within the MSWLF within two hundred (200) feet of a fault that has had displacement in Holocene time as defined by 329 IAC 10-2-89. *(Solid Waste Management Board; 329 IAC 10-16-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1827; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2770; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3808)*

329 IAC 10-16-5 Seismic impact zone siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 5. (a) This section applies to:

(1) permit applications under this article for new MSWLFs and lateral expansions; or

(2) new MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) New MSWLFs and lateral expansions that are to be permitted under this article must not be located in a seismic impact zone unless the applicant submits a demonstration, approved by the commissioner, that the proposed design includes containment structures, liners, leachate collection systems, and surface water control systems that can resist the maximum horizontal acceleration in lithified earth material as defined in 329 IAC 10-2-107 for the site. The demonstration must be submitted with the permit application, in accordance with 329 IAC 10-15-8(a)(19).

(c) New MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not be located in seismic impact zones unless the applicant submits a demonstration, approved by the commissioner, that any MSWLF unit within the MSWLF is constructed with containment structures, liners, leachate collection systems, and surface water control systems that can resist the maximum horizontal acceleration in lithified earth material as defined in 329 IAC 10-2-107 for the site. The demonstration must be submitted with the construction certification report that is required in the MSWLF's permit.

(d) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration. (*Solid Waste Management Board; 329 IAC 10-16-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1828; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2770; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3809*)

329 IAC 10-16-6 Underground mine siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 6. (a) This section applies to:

(1) permit applications under this article for new MSWLFs and lateral expansions; or

(2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) New MSWLF units, or lateral expansions being permitted under this article to an MSWLF also permitted under this article, must not be located over underground mines.

(c) New MSWLF units within MSWLFs permitted under either this article, or 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must be constructed on a stable foundation. As used in this subsection, "stable foundation" means the following:

(1) The loads and loading rate of the foundation must not cause or contribute to the failure of the leachate collection system.

(2) The total and differential settlement of the foundation must not cause or contribute to the failure of the leachate collection system.

(3) The new MSWLF unit must be designed to achieve a factor of safety against bearing capacity failure of at least two (2.0) under static conditions and of at least one and five-tenths (1.5) under seismic conditions.

(4) The new MSWLF unit must be designed to achieve a factor of safety against slope failure in accordance with Table 1 in 329 IAC 10-15-8.

(5) Factors of safety must be calculated for both long term and short term conditions expected at the site.

(6) Earthquake induced liquefaction potential or blasting in the underground mine and the effect on the bearing capacity and integrity of the new MSWLF unit must be considered in the design.

(7) Other factors of safety that may be approved by the commissioner.

(d) Lateral expansions to an MSWLF, which was originally permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, that are to be permitted under this article must not be located over underground mines unless the integrity of both the original MSWLF unit and lateral expansion will not be damaged by subsidence by demonstrating the following:

(1) The mine is more than one hundred (100) feet below the earth's surface.

(2) The mine is currently in operation or is safely accessible to the department and the owner, operator, or permittee.

(3) The mine will not collapse or, if a collapse does occur, the MSWLF unit will not be damaged by subsidence.

(e) Applicants for lateral expansions applying for a permit under this article must not locate the proposed expansion MSWLF unit over long wall underground mines unless the integrity of the proposed expansion MSWLF unit will not be damaged by subsidence by demonstrating that the mine is totally collapsed prior to the permitting of the lateral expansion.

(f) Permittees of MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, containing MSWLF units located over underground mines, must demonstrate to the commissioner that engineering measures have been incorporated into the MSWLF unit's design to accommodate subsidence and ensure that the integrity of the structural components of the MSWLF units will not be disrupted.

(g) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration. (*Solid Waste Management Board; 329 IAC 10-16-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1828; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2771; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3809*)

329 IAC 10-16-7 Unstable area siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) This section applies to:

(1) permit applications under this article for new MSWLFs and lateral expansions; or

(2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article and for new MSWLFs and lateral expansions permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must construct any MSWLF unit within the new MSWLFs or lateral expansions on a stable foundation. As used in this subsection, "stable foundation" means the following:

(1) The loads and loading rate of the foundation must not cause or contribute to the failure of the leachate collection system.

(2) The total and differential settlement of the foundation must not cause or contribute to the failure of the leachate collection system.

(3) The new MSWLF unit must be designed to achieve a factor of safety against bearing capacity failure of at least two (2.0) under static conditions and of at least one and five-tenths (1.5) under seismic conditions.

(4) The new MSWLF unit must be designed to achieve a factor of safety against slope failure in accordance with Table 1 in 329 IAC 10-15-8.

(5) Factors of safety must be calculated for both long term and short term conditions expected at the site.

(6) Earthquake induced liquefaction potential or blasting in the unstable area and the effect on the bearing capacity and integrity of the new MSWLF unit must be considered in the design.

(7) Other factors of safety that may be approved by the commissioner.

(c) Permittees of MSWLFs permitted and constructed under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must demonstrate to the commissioner that engineering measures have been incorporated into the design of any MSWLF unit located within the MSWLF to accommodate subsidence and to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted.

(d) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration. (*Solid Waste Management Board; 329 IAC 10-16-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1829; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2771; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3810*)

329 IAC 10-16-8 Karst terrain siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 8. (a) This section applies to:

(1) permit applications under this article for new MSWLFs and lateral expansions; or

(2) MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996.

(b) Applicants for new MSWLFs and lateral expansions that are applying for a permit under this article and for new MSWLFs and lateral expansions permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not locate any MSWLF unit within the new MSWLFs or lateral expansions in or over karst terrains.

(c) MSWLF units permitted and constructed under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must not be located in or over karst terrains without provisions to collect and contain all of the leachate generated by the MSWLF units and without a demonstration that the integrity of the MSWLF units will not be damaged by subsidence.

(d) For all demonstrations, the commissioner may ask for additional information prior to approval or denial of the demonstration. (*Solid Waste Management Board; 329 IAC 10-16-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1829; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2772; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3810*)

329 IAC 10-16-9 Aquifer siting restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 9. (a) MSWLF units within new MSWLFs and lateral expansions permitted under this article and new MSWLF units permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, must meet the following design requirements:

(1) Units located over an aquifer of significance with a ten (10) foot separation barrier must be constructed to incorporate the design requirements of 329 IAC 10-17-2(a).

(2) Units located over an aquifer of significance without a ten (10) foot separation barrier must be constructed to incorporate

the design requirements of 329 IAC 10-17-2(b).

(b) Permit applicants for lateral expansions or permittees of new MSWLFs applying under subsection (a)(1) to meet the design requirements of 329 IAC 10-17-2(a) shall provide evidence that demonstrates one (1) of the following:

(1) An aquifer of significance as defined under 329 IAC 10-2-13 does not exist underneath the proposed solid waste boundary of the new MSWLF or lateral expansion, or closer than ten (10) feet beyond the proposed solid waste boundary of the new MSWLF or lateral expansion.

(2) If an aquifer of significance does exist underneath the proposed solid waste boundary of the new MSWLF or lateral expansion, or closer than ten (10) feet beyond the proposed solid waste boundary of the new MSWLF or lateral expansion, a ten (10) foot barrier of nonaquifer material as defined under 329 IAC 10-2-120 exists underneath and extending ten (10) feet beyond the proposed solid waste boundary of the new MSWLF or lateral expansion.

(3) If an aquifer of significance does exist underneath the proposed solid waste boundary of the new MSWLF or lateral expansion, or closer than ten (10) feet beyond the proposed solid waste boundary of the new MSWLF or lateral expansion, but a ten (10) foot barrier of nonaquifer material as defined under 329 IAC 10-2-120 does not exist underneath and extending ten (10) feet beyond the proposed solid waste boundary of the new MSWLF or lateral expansion the permit applicant intends on constructing a barrier of nonaquifer material as defined under 329 IAC 10-2-120 that:

(A) is ten (10) feet of constructed material, in situ material, or a combination thereof; and

(B) is underneath and extending ten (10) feet beyond the solid waste boundary of the lateral expansion or new MSWLF unit.

(c) A demonstration of a ten (10) foot barrier constructed in accordance with subsection (b)(2) or (b)(3) must be submitted prior to unit construction.

(d) For all demonstrations, the commissioner may request additional information prior to approval or denial of the demonstration. (*Solid Waste Management Board; 329 IAC 10-16-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1829; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2772; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3811*)

329 IAC 10-16-10 Endangered species siting restrictions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 14-22-34; IC 36-9-30

Sec. 10. MSWLF units must not be sited in violation of IC 14-22-34. (*Solid Waste Management Board; 329 IAC 10-16-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1830; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046*)

329 IAC 10-16-11 Setbacks

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 14-22-34; IC 36-9-30

Sec. 11. (a) The solid waste boundaries of new MSWLFs and lateral expansions for applicants that are applying for permits under this article must not be located within the specified distances of the following designated points in existence on the date of public notice for zoning approval for the permitted activity or the date the application is received by the commissioner if there is no local zoning authority within the political subdivision where the proposed facility will be located:

(1) Nine hundred (900) feet of a dwelling.

(2) One thousand (1,000) feet of a potable water supply well or drinking water spring unless either of the following occurs:

(A) The department approves a ground water time of travel analysis that shows that ground water cannot travel from the solid waste boundary to the potable water supply well or drinking water spring in less than five (5) years. If the analysis is approved, the solid waste boundary may be located at a distance no less than the distance ground water can travel from the solid waste boundary in five (5) years, but in no case shall the distance be less than six hundred (600) feet.

(B) The applicant offers to conduct a testing program for all potable water supply wells and drinking water springs within one thousand (1,000) feet of the solid waste boundary. In no case shall the solid waste boundary be within six hundred (600) feet of any potable water supply wells and drinking water springs. The applicant shall submit, with the permit application to the department, a copy of a certified letter offering testing to each owner of all such potable water supply wells and drinking water springs. When conducted, the testing program must include the following:

(i) Annual testing of such water supply wells and drinking water springs for each owner that accepts the offer.

(ii) Testing for the parameters in Table 1A in 329 IAC 10-21-15(a) and Table 1B in 329 IAC 10-21-15(b).

(iii) Submitting results of the annual testing to the department with the quarterly report that most closely coincides with the sampling events if the applicant has access to the test results.

(3) One hundred (100) feet of a wetland classified as a jurisdictional wetland or jurisdictional water of the United States by the United States Army Corps of Engineers under authority of the Clean Water Act, 33 U.S.C. 1344.

- (4) Two thousand six hundred forty (2,640) feet from a public or nonpublic school.
- (5) One thousand two hundred fifty (1,250) feet of a public or private hospital with more than twenty (20) beds.
- (6) Two hundred (200) feet of a continuously flowing river.
- (7) Two hundred (200) feet of a continuously flowing stream.
- (8) Two hundred (200) feet of the real property boundary of the MSWLF.
- (9) One thousand (1,000) feet of a drinking water supply reservoir that is being used as a drinking water supply for humans or is intended to be used as a drinking water supply for humans unless the department approves a ground water time of travel analysis that shows that ground water cannot travel from the solid waste boundary to the drinking water supply reservoir in less than five (5) years. If the analysis is approved, the solid waste boundary may be located at a distance no less than the distance ground water can travel from the solid waste boundary in five (5) years, but in no case shall the distance be less than six hundred (600) feet.
- (10) Six hundred (600) feet of a factory.
- (11) Six hundred (600) feet of an office.

(b) In addition to the setback distances provided in subsections (a) and (c), the solid waste boundaries of new MSWLFs and lateral expansions for applicants that are applying for a permit under this article must not be located within an area designated for protection by a five (5) year delineation by an Indiana Wellhead Protection Plan approved by the department. If there is no approved Indiana Wellhead Protection Plan, the solid waste boundaries of new MSWLFs and lateral expansions for applicants that are applying for a permit under this article must not be located within three thousand (3,000) feet of a community water supply well.

(c) In addition to the setback distances provided in subsection (a), the solid waste boundaries of new MSWLFs and lateral expansions for applicants that are applying for a permit under this article must not be located in violation of IC 14-22-34.

(d) This rule does not prohibit a legislative body within the political subdivision where the MSWLF or lateral expansion will be located or a local zoning authority, if applicable, from adopting a resolution or ordinance to extend a setback distance established in subsections (a) through (c).

(e) The provisions of this section do not supersede any setback provision in Indiana statute. (*Solid Waste Management Board; 329 IAC 10-16-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1830; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2773; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3811*)

329 IAC 10-16-12 Reduction of setback distances

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 12. (a) The distance established in section 11(a)(1) of this rule applies unless:

- (1) written consent to shorten the distance is obtained from the dwelling owner or the dwelling owner and the dwelling occupant if the dwelling owner and the dwelling occupant are different persons; or
- (2) the legislative body within the political subdivision where the MSWLF or lateral expansion will be located or a local zoning authority, if applicable, adopts a resolution or ordinance reducing the distance, but in no case must the distance be less than six hundred (600) feet.

(b) The distances or areas designated for protection by a five (5) year delineation by an Indiana Wellhead Protection Plan established in section 11(a)(2), 11(a)(4), 11(a)(5), 11(a)(9), 11(a)(10), 11(a)(11), and 11(b) of this rule apply unless written consent to shorten the distance or to locate within an area designated for protection under section 11(b) of this rule is obtained from the person who owns or is responsible for the property or designated point.

(c) The distance established in section 11(a)(8) of this rule applies unless the adjoining property owner agrees to allow the distance to be reduced to less than two hundred (200) feet, but in no case less than one hundred (100) feet. Such an agreement is not effective to reduce the distance unless the adjoining property owner provides the following to the applicant:

- (1) Written consent allowing the distance to be reduced.
- (2) An agreement signed by the adjoining property owner that allows the applicant access to the adjoining property at any time in the future to monitor ground water or to implement other corrective action measures as approved by the commissioner.

(d) The distances established in section 11(a)(1), 11(a)(7), and 11(a)(8) of this rule apply unless a new MSWLF for which application is being made for a permit under this article, or a lateral expansion for which application is being made for a permit modification under this article:

- (1) has received, by July 1, 1995, local zoning approval;
- (2) has a solid waste boundary that is not located closer than:
 - (A) six hundred (600) feet of a dwelling;
 - (B) one hundred (100) feet of a continuously flowing stream; and
 - (C) one hundred (100) feet of the real property boundary of the facility; and
- (3) has a plan approved by the local zoning authority submitted to the commissioner that is specific to the new MSWLF area or lateral expansion area in the application and, at a minimum, shows the solid waste boundary, final contour plan, setbacks,

and primary facility entrance.

(e) When a distance established under section 11 of this rule has been reduced under subsection (a), (b), (c), or (d), all other setback distances established in this rule apply. (*Solid Waste Management Board; 329 IAC 10-16-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1831; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2774; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3812*)

329 IAC 10-16-13 Closure of existing municipal solid waste landfill units

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20; IC 36-9-30

Sec. 13. Existing MSWLFs that cannot make the demonstrations specified in sections 1(c), 2(b), 6(f), 7(c), and 8(c) of this rule must close by October 9, 1996, in accordance with 329 IAC 10-22 and conduct post-closure activities in accordance with 329 IAC 10-23. (*Solid Waste Management Board; 329 IAC 10-16-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1831; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3813*)

Rule 17. Municipal Solid Waste Landfill Liner System; Design, Construction, and CQA/CQC Requirements

329 IAC 10-17-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20; IC 36-9-30

Sec. 1. On or after the effective date of this article, new MSWLFs and lateral expansions for which application is being made for a permit must comply with the design, construction, and CQA/CQC requirements of this rule. (*Solid Waste Management Board; 329 IAC 10-17-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1831; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3813*)

329 IAC 10-17-2 Overview of liner designs and criteria for selection of design

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. (a) The following liner design is required for any section of a new MSWLF unit within an MSWLF or lateral expansion to be permitted under this article that will not be located over an aquifer of significance, as defined under 329 IAC 10-2-13, or will be located over an aquifer of significance, but there is a continuous layer of at least ten (10) feet of nonaquifer material, as defined under 329 IAC 10-2-120, separating the base of the proposed soil liner and the uppermost portion of the aquifer:

(1) At the base and side slopes, starting from the subgrade and extending upward, the liner must include the following components:

- (A) A minimum of three (3) feet of compacted soil, having a hydraulic conductivity of 1×10^{-7} centimeters per second or less.
- (B) A geomembrane.
- (C) A drainage layer.
- (D) A protective cover.

(2) At all sump areas and, at a minimum, at liner areas within twenty-five (25) feet lateral to the center of each sump, starting from the subgrade and extending upward, the liner must include the following components:

- (A) A minimum of two (2) feet of compacted soil, having a hydraulic conductivity of 1×10^{-6} centimeters per second or less.
- (B) A leak detection zone. The leak detection zone must meet the applicable requirements in this section and sections 8, 9, and 13 through 16 of this rule for drainage layers.
- (C) A minimum of three (3) feet of compacted soil having a hydraulic conductivity of 1×10^{-7} centimeters per second or less.
- (D) A geomembrane.
- (E) A geosynthetic clay liner.
- (F) A geomembrane.
- (G) A drainage layer.
- (H) A protective cover.

(b) The following liner design is required for any section of a new MSWLF unit or lateral expansion within an MSWLF to be permitted under this article that will be located over an aquifer of significance, as defined under 329 IAC 10-2-13, and there is not a continuous layer of at least ten (10) feet of nonaquifer material, as defined under 329 IAC 10-2-120, separating the base of the proposed soil liner and the uppermost portion of the aquifer:

(1) At the base and side slopes, starting from the subgrade and extending upward, the liner must include the following components:

- (A) A minimum of two (2) feet of compacted soil, having a hydraulic conductivity of 1×10^{-6} centimeters per second or less. This component must extend up the side slope of the proposed MSWLF unit to a height at least two (2) feet above the highest temporal fluctuation of the ground water table, as determined from the hydrogeologic site investigation required under 329 IAC 10-15-4.
- (B) A drainage layer. This component must extend up the side slope of the proposed MSWLF unit to a height at least two (2) feet above the highest temporal fluctuation of the ground water table, as determined from the hydrogeologic site investigation required under 329 IAC 10-15-4.
- (C) A minimum of three (3) feet of compacted soil having a hydraulic conductivity of 1×10^{-7} centimeters per second or less.
- (D) A geomembrane.
- (E) A drainage layer.
- (F) A protective cover.

(2) At all sump areas and, at a minimum, at liner areas within twenty-five (25) feet lateral to the center of each sump, starting from the subgrade and extending upward, the liner must incorporate the design components described in subsection (a)(2).

(c) For the purposes of this rule, sump areas are considered to be those areas of the proposed MSWLF unit that are designed to collect and remove leachate where leachate is expected to accumulate to a depth of at least one (1) foot.

(d) The minimum distance for extension of liner design components related to sump areas may be increased at the discretion of the commissioner, depending on site-specific factors, with consideration of the highest temporal fluctuations of the ground water table at the site.

(e) The commissioner may make available to the applicant standardized municipal solid waste landfill designs that are not less stringent than the requirements of this rule. (*Solid Waste Management Board; 329 IAC 10-17-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1831; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2774; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3813*)

329 IAC 10-17-3 Landfill subgrade; design, construction, and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) The subgrade surface under the liner systems described in section 2 of this rule must:

- (1) be constructed with on-site soils, or a select soil specified in the approved construction plan or otherwise approved by the commissioner;
- (2) be constructed with material that is free of organic material, except that organic material naturally occurring in the soil;
- (3) be prepared using procedures and equipment specified in:
 - (A) the approved construction plan; or
 - (B) otherwise approved by the commissioner;
- (4) meet the stable foundation criteria as defined in 329 IAC 10-16-7(b); and
- (5) meet any additional requirements necessary to obtain adequate design and construction, as specified in the construction plans or as determined by the commissioner.
- (b) Before any material is placed over the subgrade, the project engineer shall ensure the following:
 - (1) The subgrade was tested for density and moisture content as specified in the approved construction plans.
 - (2) The exposed surface was inspected to:
 - (A) evaluate the suitability of the subgrade;
 - (B) ensure that the surface is properly compacted, smooth, and uniform; and
 - (C) ensure that elevations are consistent with the approved construction plans.
 - (3) Any additional requirements necessary to obtain an adequate subgrade, as specified in the construction plans or as determined by the commissioner, are met.

(*Solid Waste Management Board; 329 IAC 10-17-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1832; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2775*)

329 IAC 10-17-4 Soil component of the liner; design requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 4. The soil components of the liner systems described in section 2 of this rule must meet the following requirements:

- (1) Be constructed on a slope of no less than two percent (2%) toward the leachate collection pipes.
- (2) Meet the specified thickness and hydraulic conductivity requirements of section 2 of this rule, as appropriate to the location

of the proposed MSWLF unit.

- (3) Be composed of lifts, each having a maximum thickness that:
 - (A) is specified in the approved construction plan or is otherwise approved by the commissioner; and
 - (B) in no case exceeds nine (9) inches after compaction.
- (4) Have a design that adequately addresses the following factors:
 - (A) Protection from damage due to uplift from hydrostatic forces.
 - (B) Prevention of damage due to freeze/thaw and wet/dry cycles.
 - (C) Any additional factors that are necessary to obtain an adequate soil component as specified in the construction plans or as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1833; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2776; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3814)

329 IAC 10-17-5 Soil component of the liner; construction and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20-2; IC 36-9-30

Sec. 5. (a) Before soil liner construction, prior to soil compaction, the soil liner material must be tested at a frequency described in Table 1 of this subsection. During construction, after the soil material has been compacted, the soil liner material must be tested as described in Table 2 of this subsection.

TABLE 1
Soil Liner Material: Minimum Testing Frequencies Prior to Liner Construction

Item Tested	Minimum Frequency
Grain size	Every 5,000 cubic yards or soil material change
Moisture	Every 5,000 cubic yards or soil material change
Atterberg limits (liquid limit and plasticity index)	Every 5,000 cubic yards or soil material change
Moisture-density curve	Every 5,000 cubic yards or soil material change
Lab hydraulic conductivity (remolded samples)	Every 10,000 cubic yards

TABLE 2
Soil Liner Material: Minimum Testing Frequencies During Liner Construction

Item Tested	Minimum Frequency
Density (nuclear or sand cone)	5 tests per acre per lift, evenly distributed
Moisture content	5 tests per acre per lift, evenly distributed
Undisturbed hydraulic conductivity	1 test per acre per lift
Dry density (undisturbed sample)	1 test per acre per lift
Moisture content (undisturbed sample)	1 test per acre per lift
Atterberg limits (liquid limit and plasticity index)	1 test per acre per lift
Grain size (to the 2 micron particle size)	1 test per acre per lift
Moisture-density curve	Every 5,000 cubic yards and all changes in material

(b) To ensure proper soil compaction, the following factors must be controlled:

- (1) The moisture content of the soil must be maintained within the range identified in the moisture-density curve and hydraulic conductivity relation that is developed for the proposed MSWLF unit, both prior to and during compaction of the soil lift, to ensure the remolded lift does not exceed allowable hydraulic conductivity.
- (2) The density after compaction must be within the range identified in the moisture-density curve and hydraulic conductivity relation that is developed for the proposed MSWLF unit, to ensure that the remolded lift does not exceed allowable hydraulic conductivity.
- (3) Lift thickness.
- (4) Compactive energy/kneading action to ensure effective destruction of soil clods.
- (5) Placement operations to ensure elimination of lift interfaces.
- (6) Any additional factors necessary to obtain adequate soil compaction results as specified in the construction plan or as determined by the commissioner.

(c) Unless a waiver pursuant to subsection (e) is granted by the commissioner, test pads must be constructed and tested prior to construction of the full-scale compacted soil liner. Test pads must be constructed each time:

- (1) the dry unit weight of the soil changes by at least five (5) pounds per cubic foot, based on a moisture density curve established by a standard or modified proctor test;
- (2) construction equipment is changed; or
- (3) construction practices are changed.

(d) The test pads required in subsection (c) must be used to verify that the specifications outlined in the approved construction plan, including density, moisture content, and hydraulic conductivity specifications, can be achieved. Tests must conform with the test standards established in section 17 of this rule. In addition, the following test methods pertaining to in situ hydraulic conductivity are acceptable:

- (1) Sealed double-ring infiltrometer (SDRI).
- (2) Boutwell borehole test, with a minimum of five (5) tests required.
- (3) Shelby tube (carved block) test using a twelve (12) inch diameter tube, with a minimum of three (3) tests required.
- (4) Other equivalent test methods approved by the commissioner.

(e) The requirements outlined in subsection (c) may be waived by the commissioner, provided the owner, operator, or permittee demonstrates, to the satisfaction of the commissioner, the following:

- (1) The soil to be used in the soil component of the liner:
 - (A) is of a unified soil classification of ML, CL, MH, CH, or OH;
 - (B) contains a minimum of fifty percent (50%), by weight, of material that can pass through the number 200 sieve;
 - (C) consists of a minimum of twenty-five percent (25%), by weight, of clay content, which is defined for the purposes of this subsection to mean soil particles that are less than or equal to five-thousandths (0.005) millimeter in diameter;
 - (D) has a liquid limit (LL) of at least twenty-five (25); and
 - (E) has a plasticity index (PI) of at least ten (10).
- (2) Adequate compactive effort will be applied during soil liner construction. The following compaction curve data, obtained by plotting dry unit weight versus molding water content, must be submitted to the commissioner in order to demonstrate that adequate compactive effort will be applied:
 - (A) At least five (5) compaction curves must be submitted, provided the soil does not vary in dry unit weight by more than five (5) pounds per cubic foot.
 - (B) At least three (3) additional compaction curves must be submitted every time the soil varies in dry unit weight by more than five (5) pounds per cubic foot.

(Solid Waste Management Board; 329 IAC 10-17-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1833; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3814)

329 IAC 10-17-6 Geomembrane component of the liner; design requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. The geomembrane components of the liner systems described in section 2 of this rule must:

- (1) consist of a minimum thickness of thirty (30) mils if the geomembrane is a flexible membrane liner, or a minimum thickness of sixty (60) mils if the geomembrane is high density polyethylene (HDPE);
- (2) be placed above and in direct contact with the soil liner, which has a slope of not less than two percent (2%) toward the leachate collection pipes;
- (3) have the minimum number of field seams necessary in corners and irregularly shaped locations;
- (4) have horizontal seams placed no closer to the toe of the slope on the inside of the cell than the distance specified in the approved construction plans; and
- (5) meet any additional design specifications necessary to obtain an adequate geomembrane liner as specified in the approved construction plan or as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1834)

329 IAC 10-17-7 Geomembrane component of the liner; construction and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) Before geomembrane field construction, the project engineer shall review documentation of quality control testing as follows:

- (1) In a review of the testing of raw materials used to manufacture the geomembrane, the project engineer shall do the following:
 - (A) Ensure that the quality control testing meets the specifications of the approved construction plan.
 - (B) Review copies of the origin and identification of the raw materials.

- (C) Review copies of quality control certificates issued by the producers of the raw materials. The certificates must be accompanied by results of the following tests unless a particular test requirement is waived by the commissioner:
- (i) Density test.
 - (ii) Melt flow index test.
 - (iii) Any other test deemed necessary by the commissioner to verify raw material quality.
- (2) In a review of the testing documentation of the geomembrane rolls that are fabricated into geomembrane, the project engineer shall do the following:
- (A) Check the manufacturer's certified quality control documentation to verify that the geomembrane was continuously inspected during the manufacturing process for the following:
- (i) Lack of uniformity.
 - (ii) Damage.
 - (iii) Imperfections.
 - (iv) Holes.
 - (v) Cracks.
 - (vi) Thin spots.
 - (vii) Foreign materials.
- (B) Ensure that any imperfections discovered during inspection were repaired and then reinspected, either at the manufacturing facility or on-site at the MSWLF.
- (C) Review the results of quality control tests conducted on the finished product by the geomembrane manufacturer. These tests must include, at a minimum, the following:
- (i) Single point stress rupture test.
 - (ii) Tensile strength test.
 - (iii) Tear and puncture resistance test.
 - (iv) Any other test deemed necessary by the commissioner to verify finished product quality.
- (3) The project engineer shall ensure that manufacturer quality control testing of the raw materials and of the finished geomembrane product was conducted:
- (A) as required in the approved construction plans; or
 - (B) as otherwise required by the commissioner.
- (b) During geomembrane field construction, the project engineer shall ensure the following:
- (1) The geomembrane is installed on supporting soil that is reasonably free of the following:
- (A) Stones.
 - (B) Organic material, except that organic material naturally occurring in the soil.
 - (C) Irregularities.
 - (D) Protrusions.
 - (E) Loose soil or soft spots.
 - (F) Standing water.
 - (G) Any abrupt change in grade that could damage the geomembrane.
- (2) All aspects of geomembrane installation are carried out in accordance with the following:
- (A) The approved construction plan.
 - (B) The manufacturer's recommendations.
 - (C) The design standards described under section 6 of this rule.
 - (D) Any additional requirements necessary to obtain adequate geomembrane liner construction and installation, as specified in the construction plans or as determined by the commissioner.
- (3) The anchor trench is excavated to the length and width prescribed in the approved construction plans.
- (4) Field seaming is conducted as follows:
- (A) To meet the requirements for design of the geomembrane component of the liner, as described under section 6 of this rule.
 - (B) In a manner that leaves seams free of the following:
 - (i) Dust.
 - (ii) Dirt.
 - (iii) Moisture.
 - (iv) Debris.
 - (v) Foreign material of any kind.
 - (C) Using an appropriate method consistent with:
 - (i) the approved construction plan; or
 - (ii) a method otherwise approved by the commissioner.
 - (D) At a time when the following conditions exist, unless otherwise approved by the commissioner or project engineer,

or otherwise recommended by the manufacturer:

- (i) Air temperature is at least thirty-two (32) degrees Fahrenheit but does not exceed one hundred twenty (120) degrees Fahrenheit.
 - (ii) Sheet temperature is at least thirty-two (32) degrees Fahrenheit but does not exceed one hundred fifty-eight (158) degrees Fahrenheit.
 - (iii) Wind gusts are not in excess of twenty (20) miles per hour.
- (5) Quality assurance and quality control testing conducted in the field conforms with requirements of the approved construction plan and includes the following:
- (A) A sample is taken from each lot number of geomembrane material that arrives on site and is tested in the following manner for the purpose of fingerprinting the material:
 - (i) Thickness of the sample must be measured at a rate of five (5) measurements per roll of geomembrane, at locations evenly distributed throughout the roll.
 - (ii) The following tests must be conducted at a rate of either once per lot or once per fifty thousand (50,000) square feet of geomembrane:
 - (AA) Tensile characteristics test for strength and elongation at yield and at break.
 - (BB) Carbon black content test.
 - (CC) Carbon black dispersion test, if applicable.
 - (DD) Any additional tests that are necessary as determined by the commissioner.
 - (B) Visual inspections of the geomembrane material, followed by appropriate repairs and reinspections, are made for:
 - (i) lack of uniformity;
 - (ii) damage;
 - (iii) imperfections;
 - (iv) tears;
 - (v) punctures;
 - (vi) blisters; and
 - (vii) excessive folding.
 - (C) Test seams for shear strength and peel strength are made as follows:
 - (i) At the start of each work period for each seaming crew.
 - (ii) After every four (4) hours of continuous seaming.
 - (iii) Every time seaming equipment is changed.
 - (iv) When significant changes in geomembrane temperature, as determined by the project engineer or by manufacturer recommendation, are observed.
 - (v) As required in the approved construction plan.
 - (vi) As may be required by the commissioner.
 - (D) Nondestructive seam testing proceeds as follows:
 - (i) Testing is performed on all seams over their full length using a test method:
 - (AA) in accordance with the approved construction plans;
 - (BB) in accordance with section 17 of this rule; or
 - (CC) otherwise acceptable to the commissioner.
 - (ii) Testing is monitored by the project engineer, and seaming and patching operations are inspected for uniformity and completeness.
 - (iii) Results of testing are recorded by the project engineer in records that include the following information:
 - (AA) The location of the seam test.
 - (BB) The test unit number.
 - (CC) The name of the person conducting the test.
 - (DD) The results of all tests.
 - (EE) Any other information that may be necessary to judge the adequacy of the seaming and patching procedures.
 - (E) Geomembrane seams that cannot be nondestructively tested are overlain with geomembrane material of identical type.
 - (F) Destructive seam testing is performed at the site, or at an independent laboratory, according to the approved construction plans, and meets the following requirements:
 - (i) Testing is performed:
 - (AA) on a minimum of one (1) test per five hundred (500) feet of seam length if the seam is welded with a fusion weld;
 - (BB) on a minimum of one (1) test per four hundred (400) feet of seam length if the seam is welded with an extrusion weld;

- (CC) on a minimum of one (1) test for each seaming machine; and
- (DD) as otherwise required by the commissioner.
- (ii) Destructive seam testing includes:
 - (AA) a shear strength test; and
 - (BB) a peel strength test.
- (iii) If a seam location fails destructive testing:
 - (AA) the seam is reconstructed over a minimum of ten (10) feet in each direction from the site of the failed test;
 - (BB) additional samples are taken for testing; and
 - (CC) reconstruction and retesting is repeated, as necessary, until at least eighty percent (80%) of the samples at the test location pass the destructive seam test.

(Solid Waste Management Board; 329 IAC 10-17-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1834; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2776; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3815)

329 IAC 10-17-8 Drainage layer component and leachate collection pipes; design requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 8. (a) The drainage layer components of the liner systems described in section 2 of this rule must meet the following requirements:

- (1) Be configured to allow for installation of a leachate collection pipe system that meets the design requirements of subsection (b).
- (2) Have a design that adequately addresses prevention of clogging of the drainage system.
- (3) Be capable of limiting, throughout the active life, closure, and post-closure period of the MSWLF, the level of leachate above the liner system to a maximum of one (1) foot under conditions expected to be present after the final cover has been placed.

(4) Consist of either of the following types of drainage material:

(A) Soil that:

- (i) has a minimum thickness of twelve (12) inches and a minimum hydraulic conductivity of 1×10^{-2} centimeters per second; and
- (ii) is free of organic material except that organic material naturally occurring in the soil.

(B) Geosynthetic material that:

- (i) is demonstrated to be chemically compatible with the waste and with the leachate generated by the waste;
- (ii) has transmissivity that will not be impeded by the maximum compressive load of materials placed above the drainage layer; and
- (iii) has a minimum transmissivity of 3×10^{-5} meters² per second, using the appropriate safety factors and considering the long term creep impact, as specified under 329 IAC 10-15-8(a)(1).

(b) The leachate collection pipes within the drainage layer must meet the following requirements:

- (1) Pipes must have a minimum diameter of six (6) inches and a minimum slope of one percent (1%) toward the leachate storage areas or the conveying line.
- (2) Pipes must be hydraulically designed to effectively remove leachate and provide conveyance of leachate to an appropriately designed storage or treatment facility throughout the active life, closure, and post-closure periods of the MSWLF.
- (3) The chemical properties of the pipes must not be adversely affected by the waste or the leachate generated by the waste.
- (4) Pipes must have adequate structural strength, as demonstrated by calculations prescribed in 329 IAC 10-15-8(a)(18), to support the maximum static and dynamic loads and stresses imposed by:
 - (A) the drainage layer;
 - (B) the protective cover;
 - (C) the waste;
 - (D) the final cover component; and
 - (E) any equipment used in the construction or operation of the MSWLF.

(5) The length of the leachate collection pipes must not exceed the capabilities of available clean-out devices or procedures.

(c) The drainage layer design must meet any additional requirements necessary to obtain an adequate drainage layer as specified by the construction plans or as determined by the commissioner. *(Solid Waste Management Board; 329 IAC 10-17-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1836; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2778; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3817)*

329 IAC 10-17-9 Drainage layer component of the liner; construction and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20-2; IC 36-9-30

Sec. 9. (a) If the drainage layer material is to consist of soil or soil like materials, the project engineer shall ensure the following:

- (1) A grain size analysis and hydraulic conductivity test is completed for soil drainage layer materials at frequencies described in Table 1 of this subsection.
- (2) The quality control and quality assurance testing of the soil drainage material meets the requirements of the approved construction plans.
- (3) The soil drainage layer is constructed and graded in accordance with the approved construction plans.

TABLE 1

Soil Drainage Layer Materials:
Minimum Testing Frequencies

Item Tested	Minimum Frequency
Grain size (to the No. 200 sieve)	1 test per 1,500 cubic yards (2,400 per ton)
Hydraulic conductivity test	1 test per 3,000 cubic yards (4,800 per ton) or minimum of 3 tests

(b) If the drainage layer material is to consist of a geosynthetic material, the project engineer shall ensure the following:

- (1) The geosynthetic drainage layer material is chemically compatible with the waste to be deposited and with the leachate that will be generated.
- (2) Effective liquid removal will be maintained by the drainage layer throughout the active life, closure and post-closure period of the MSWLF.
- (3) The geosynthetic drainage layer is constructed and installed in accordance with the approved construction plans.
- (4) The quality control and quality assurance testing of the geosynthetic drainage material meets the requirements of the approved construction plans.
- (5) Results of the following tests, or equivalent tests where applicable to a specific product, and the following criteria are adequately addressed:

(A) If the geosynthetic material is a geotextile:

- (i) grab elongation test;
- (ii) grab tensile strength test;
- (iii) puncture resistance test;
- (iv) trapezoidal tear test;
- (v) ultraviolet (five hundred (500) hours) resistance test;
- (vi) abrasion or tumble test;
- (vii) permittivity test;
- (viii) apparent opening size (AOS) test;
- (ix) long term flow (clogging) test;
- (x) gradient ratio (clogging) test;
- (xi) the nature of the fibers (i.e., continuous filament or staple fibers);
- (xii) the chemical compatibility of the geotextile;
- (xiii) the polymer composition;
- (xiv) the structure of the geotextile (i.e., woven or nonwoven);
- (xv) thermal degradation and oxidation in extreme acidic conditions;
- (xvi) pH resistance of the geotextile;
- (xvii) creep;
- (xviii) resistance to extreme temperature;
- (xix) resistance to bacteria;
- (xx) resistance to burial deterioration; and
- (xxi) other tests or information that may become necessary, as determined by the commissioner.

(B) If the geosynthetic material is a geonet:

- (i) tensile strength test;
- (ii) hydraulic transmissivity test;
- (iii) specific gravity test;
- (iv) melt flow index test;
- (v) carbon black content test;
- (vi) abrasion or tumble test;
- (vii) creep;

- (viii) thickness;
- (ix) chemical compatibility;
- (x) resistance to extreme temperature;
- (xi) resistance to bacteria;
- (xii) resistance to burial deterioration; and
- (xiii) other tests or information that may become necessary, as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1837; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3818)

329 IAC 10-17-10 Geosynthetic clay component of the liner; design, construction, and CQA/CQC requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 10. (a) The geosynthetic clay liner (GCL) must meet current industry design standards and any additional design standards necessary to obtain an adequate GCL, as specified in the construction plans or as determined by the commissioner.

(b) The project engineer shall ensure that adequate quality control and quality assurance procedures have been followed throughout all of the following operations:

- (1) Refining of raw materials, based on the manufacturer's documentation, and manufacturing of geosynthetic clay liner.
- (2) Storage, handling, and shipment of the geosynthetic clay liner.
- (3) Installation of the geosynthetic clay liner, including:
 - (A) proper placement, joining, and repair procedures; and
 - (B) proper backfilling or covering procedures.

(Solid Waste Management Board; 329 IAC 10-17-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1837)

329 IAC 10-17-11 Protective cover component of the liner; design requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 11. (a) Unless the alternative design described in subsection (b) is used, a protective cover must be placed directly over the uppermost drainage layer of the liner system and must comply with the following requirements:

- (1) Consist of one (1) of the following:
 - (A) A soil material of sufficient quantity to bring the final depth of the combined drainage layer and protective cover to thirty (30) inches.
 - (B) Eighteen (18) inches of bottom ash or foundry sand if the drainage layer consists of a soil material.
 - (C) Thirty (30) inches of bottom ash or foundry sand if the drainage layer consists of a geosynthetic material.
- (2) Satisfy the following standards:
 - (A) Meet the Unified Soil Classification System of SC, SM, SP, SW, GC, GM, GP, or GW.
 - (B) Contain less than fifty percent (50%) (by weight) material that can pass through the number 200 sieve.
 - (C) Be free of any organic material except that organic material naturally occurring in the soil.
 - (D) If placed over a drainage layer that consists of any soil materials or soil-like materials specified in subdivision (1), meet the following criteria or an equivalent criteria:

$$\frac{D_{15} \text{ of drainage layer}}{D_{85} \text{ of protective cover}} \leq 5$$

Where: D_{15} = the grain diameter in millimeters at which 15% (by weight) of the grains are finer.
 D_{85} = the grain diameter in millimeters at which 85% (by weight) of the grains are finer.

(b) An alternative design to the option described in subsection (a) uses a puncture-resistant geotextile that meets the following requirements:

- (1) The geotextile must be placed directly over the geomembrane.
- (2) The geotextile must have a minimum weight of sixteen (16) ounces per square yard.
- (3) The geotextile must be covered with twelve (12) inches of clean gravel that:
 - (A) is classified as GW or GP by the Unified Soil Classification System; and
 - (B) has no more than five percent (5%) (by weight) of grains passing the number 200 sieve.

(Solid Waste Management Board; 329 IAC 10-17-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1838; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2779)

329 IAC 10-17-12 Protective cover component of the liner; construction and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. (a) The protective cover must be installed in a single lift with no compaction. Quality control and quality assurance testing on the protective cover must include the following tests conducted at the indicated frequencies during installation of the protective cover:

(1) Grain size distribution to the number 200 sieve must be performed for every one thousand five hundred (1,500) cubic yards of protective cover placed on the liner system.

(2) Carbonate content testing must be performed:

(A) at a pH of four (4.0); and

(B) every three thousand (3,000) cubic yards;

and the carbonate content must be no greater than five percent (5%).

(3) Any additional tests as specified in the construction plans or as determined by the commissioner.

(b) If the geotextile described in section 11(b) of this rule is used as an alternative to the protective cover, the project engineer shall ensure the following:

(1) Proper quality control and quality assurance testing is performed on the geotextile, and adequate results are obtained for the following tests, where applicable, or equivalent tests, performed in accordance with section 17 of this rule:

(A) Grab elongation test.

(B) Grab tensile strength test.

(C) Puncture resistance test.

(D) Trapezoidal tear test.

(E) Ultraviolet (five hundred (500) hours) resistance test.

(F) Abrasion or tumble test.

(G) Other tests that may become necessary as determined by the commissioner.

(2) The following criteria are addressed when determining the quality of the geotextile:

(A) The nature of the fibers (i.e., continuous filament or staple fibers).

(B) The chemical compatibility of the geotextile.

(C) The polymer composition.

(D) The structure of the geotextile (i.e., woven or nonwoven).

(E) Thermal degradation and oxidation in extreme acidic conditions.

(F) pH resistance of the geotextile.

(G) Creep.

(H) Resistance to extreme temperatures.

(I) Resistance to bacteria.

(J) Resistance to burial deterioration.

(K) Other criteria that may become necessary as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1838; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3819)

329 IAC 10-17-13 Optional drainage layer filter; design requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-18; IC 13-20-2; IC 36-9-30

Sec. 13. A filter fabric may be incorporated into the drainage layer design to prevent fine soil particles of the protective soil cover from migrating into the drainage medium. The design of the filter must allow gases and water to freely enter the drainage medium and must provide the following:

(1) Adequate permeability, such that $k_f \geq 10k_s$, where:

(A) k_f = the geotextile filter permeability; and

(B) k_s = the overlying protective cover soil permeability.

(2) Soil particle retention that meets the following criteria, or an equivalent criteria:

(A) O_{95} of the geotextile < (2) d_{85} of the protective cover.

(B) O_{95} of the geotextile > (2) d_{15} of the protective cover, where:

(i) O_{95} = the apparent opening size of the geotextile at which ninety-five percent (95%) of the soil particles will be retained;

(ii) d_{85} = the protective cover soil particle size at which eighty-five percent (85%) of the particles are finer; and

- (iii) d_{15} = the protective cover soil particle size at which fifteen percent (15%) of the particles are finer.
- (3) Adequate construction survivability, with construction survivability assessed using accepted industry testing standards, which take into account:
 - (A) the severity of installation, with consideration of the type of material placed adjacent to the geotextile;
 - (B) the construction installation technique; and
 - (C) the minimum strength properties prescribed by applicable industry guidelines with consideration of the severity of the installation.
- (4) Adequate chemical and physical resistance to:
 - (A) the expected waste;
 - (B) the overlying materials; and
 - (C) the leachate expected to be generated at the MSWLF.
- (5) Any additional requirements necessary to obtain an adequate filter as specified in the construction plans or as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1839; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3819)

329 IAC 10-17-14 Optional drainage layer filter; construction and quality assurance/quality control requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 14. (a) The project engineer shall ensure that proper quality control and quality assurance testing, where applicable, is performed on the filter materials and that adequate results are obtained for the following tests, or equivalent tests, performed in accordance with section 17 of this rule:

- (1) Grab elongation test.
- (2) Grab tensile strength test.
- (3) Puncture resistance test.
- (4) Trapezoidal tear test.
- (5) Ultraviolet five hundred (500) hours resistance test.
- (6) Abrasion or tumble test.
- (7) Permittivity test.
- (8) AOS test.
- (9) Long term flow (clogging) test.
- (10) Gradient ratio or hydraulic conductivity ratio (clogging) test.
- (11) Any additional tests required by the commissioner.

(b) The project engineer shall also ensure that the following criteria are addressed when determining the quality of the filter materials:

- (1) The nature of the fibers (i.e., continuous filament or staple fibers).
- (2) The chemical compatibility of the geotextile.
- (3) The polymer composition.
- (4) The structure of the geotextile (i.e., woven or nonwoven).
- (5) Thermal degradation and oxidation in extreme acidic conditions.
- (6) pH resistance of the geotextile.
- (7) Creep.
- (8) Resistance to extreme temperatures.
- (9) Resistance to bacteria.
- (10) Resistance to burial deterioration.
- (11) Other criteria, as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-14; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1839; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2779)

329 IAC 10-17-15 Alternative liner designs, construction technologies, and CQA/CQC plans

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 15. (a) The commissioner shall approve alternative liner designs or construction technologies if they are demonstrated, to the satisfaction of the commissioner, to provide at least equivalent protection to public health and the environment as the following:

- (1) Subgrade design and construction, as specified under section 3 of this rule.
 - (2) Soil liner design and construction, as specified under sections 4 and 5 of this rule.
 - (3) Geomembrane liner design and construction, as specified under sections 6 and 7 of this rule.
 - (4) Drainage layer or leachate collection pipe design and construction, as specified under sections 8 and 9 of this rule.
 - (5) Geosynthetic clay liner design and construction, as specified under section 10 of this rule.
 - (6) Protective cover design and construction, as specified under sections 11 and 12 of this rule.
 - (7) Optional drainage layer filter design and construction, as specified under sections 13 and 14 of this rule.
- (b) The commissioner shall approve alternative CQA/CQC plans if they are demonstrated, to the satisfaction of the commissioner to provide at least equivalent protection to public health and the environment, as the following:
- (1) Subgrade CQA/CQC requirements, as specified under section 3 of this rule.
 - (2) Soil liner CQA/CQC requirements, as specified under section 5 of this rule.
 - (3) Geomembrane CQA/CQC requirements, as specified under section 7 of this rule.
 - (4) Drainage layer or leachate collection pipe CQA/CQC requirements, as specified under section 9 of this rule.
 - (5) Geosynthetic clay liner CQA/CQC requirements, as specified under section 10 of this rule.
 - (6) Protective cover CQA/CQC requirements, as specified under section 12 of this rule.
 - (7) Optional drainage layer filter CQA/CQC requirements as specified under section 14 of this rule.

(Solid Waste Management Board; 329 IAC 10-17-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1839)

329 IAC 10-17-16 Municipal solid waste landfill liner system; post construction care requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. The project engineer shall ensure that proper post construction care is provided to protect the landfill design components from damage after construction is completed. Post construction care requirements include the following:

- (1) Upon completion of soil liner construction:
 - (A) the surface must be rolled smooth to seal the surface and to allow precipitation to run off freely;
 - (B) the completed liner must be surveyed to confirm that the liner's thickness, slope, and other design factors are as required in the approved construction plan; and
 - (C) the soil liner must be covered in a timely manner to prevent desiccation or damage due to extreme temperatures.
- (2) Upon completion of geomembrane seaming:
 - (A) timely cover; or
 - (B) temporary weighing using sandbags, or other suitable weights, to prevent damage from:
 - (i) wind uplift or other weather related damage; or
 - (ii) construction activities taking place on top of the installed geomembrane.
- (3) Upon completion of drainage layer construction, steps must be taken to prevent damage to the drainage layer from fines related to wind borne or water borne sedimentation.
- (4) Upon completion of the drainage layer filter installation, if the optional filter is installed, steps must be taken to prevent damage from fines related to wind borne or water borne sedimentation.
- (5) Any additional requirements necessary to obtain adequate post construction care of the liner system, as specified in the construction plan or as determined by the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1840)

329 IAC 10-17-17 Municipal solid waste landfill liner system; test standards

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 17. All testing required under this rule must be performed in accordance with:

- (1) the American Society for Testing and Materials (ASTM), 1995 Annual Book of ASTM Standards, Section 4 Construction, Volume 04.08 Soil and Rock (I): D 420-D 4914;
- (2) the Geosynthetic Research Institute (GRI), Geosynthetic Design Guidance for Hazardous Waste Landfill Cells and Surface Impoundments, Designing with Geosynthetics, Third Edition;
- (3) the Corps of Engineers (COE), Construction Control for Earth and Rock-Fill Dams, January 17, 1977, Soil Mechanics Design Settlement Analysis, January 1953; or
- (4) other current industry standards if acceptable to the commissioner.

(Solid Waste Management Board; 329 IAC 10-17-17; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1840; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2780)

329 IAC 10-17-18 CQA/CQC preconstruction meeting

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 18. For the purposes of ensuring coordination of all aspects of CQA/CQC, a preconstruction meeting must be held upon the award of the construction contract. The preconstruction meeting must involve all relevant persons involved with implementing the CQA/CQC plan, such as the MSWLF owner or operator, the design engineer, CQA/CQC personnel, and the primary construction contractor. The preconstruction meeting may be used to accomplish the following:

- (1) Provide each involved entity with all relevant CQA/CQC documents and supporting information addressing the site-specific CQA/CQC plan and its role relevant to the construction plans.
- (2) Review the responsibilities, authorities, and lines of communication for each of the involved entities.
- (3) Review the established procedures for observation and testing, including sampling strategies identified in the CQA/CQC plan.
- (4) Review the established acceptance and rejection criteria as specified in the CQA/CQC plan.
- (5) Review the approved specifications, with methods and means for decision making and resolution of problems pertaining to data.
- (6) Review methods for documenting and reporting all inspection data.
- (7) Discuss procedures for the storage and protection of MSWLF construction material on-site.
- (8) Organize for relevant persons a site walk-around to review the project site layout, construction material and equipment storage locations.
- (9) Discuss the CQA/CQC plan and other relevant issues and concerns.

(Solid Waste Management Board; 329 IAC 10-17-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1840; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3820)

Rule 18. Municipal Solid Waste Landfills; Vertical Expansions**329 IAC 10-18-1 Vertical expansions for municipal solid waste landfills**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) Applicants for a vertical expansion modification must include the following with the application:

- (1) An environmental assessment of the proposed expansion area that addresses the following:
 - (A) The geology and ground water hydrology of the existing MSWLF site and adjacent areas.
 - (B) The most recent results from ground water monitoring, conducted in accordance with the requirements of the MSWLF's permit, using statistical methods required under the MSWLF's permit.
 - (C) Identification of adjacent land uses.
- (2) Plot plans that are certified by a registered professional engineer and that:
 - (A) use a scale of at least one (1) inch per one hundred (100) feet for a MSWLF of less than eighty (80) acres;
 - (B) use a scale of at least one (1) inch per two hundred (200) feet for a MSWLF of eighty (80) acres or more;
 - (C) include a bar scale on each drawing;
 - (D) include elevations that correlate with United States Geological Survey (USGS) mean sea level data;
 - (E) include existing and newly proposed surface elevations within three hundred (300) feet of the facility boundaries;
 - (F) indicate the solid waste boundaries and the proposed final contours of the site using:
 - (i) intervals of no more than two (2) feet if the MSWLF is less than eighty (80) acres; and
 - (ii) intervals of no more than five (5) feet if the MSWLF is equal to or greater than eighty (80) acres; and
 - (G) indicate the MSWLF elevations over the six (6) months preceding the application submittal.
- (3) Design information that addresses the following:
 - (A) A slope stability analysis for the proposed final slope.
 - (B) Total and differential settlement calculations of the MSWLF unit foundation incorporating new loadings.
 - (C) A foundation bearing capacity analysis if applicable.
 - (D) Surface water control in compliance with 329 IAC 10-15-8(a)(20) and 329 IAC 10-15-8(a)(21).
 - (E) Sedimentation and erosion control in compliance with 329 IAC 10-15-8(a)(17).
- (4) Operational information that includes the following:
 - (A) A description of the type of operation.
 - (B) The number of acres currently permitted.
 - (C) The total number of acres filled at the time of application submittal.
 - (D) The quantity of waste received at the MSWLF in either cubic yards per day or tons per day.
 - (E) The type of waste received at the site.

(F) The additional volume of waste proposed for disposal at this MSWLF.

(5) Two (2) geologic cross sections, one (1) north-south and one (1) east-west, showing approved contours, proposed contours, and depth of waste placement.

(6) Documented evidence that the existing MSWLF unit to be vertically expanded has been constructed with, at a minimum, either of the following:

(A) Design features, including:

(i) a barrier layer that:

(AA) consists of at least ten (10) feet of material having a hydraulic conductivity of not more than 1×10^{-6} centimeter per second, where the uppermost three (3) feet of this material has been recomacted to achieve an equivalent hydraulic conductivity of not more than 1×10^{-7} centimeters per second; and

(BB) is directly beneath the waste; and

(ii) a leachate collection system approved by the commissioner as required by 329 IAC 2-10-3(1), which was repealed in 1996.

(B) An alternative design that is demonstrated, to the satisfaction of the commissioner, to be equivalent to the design standard in clause (A), such as:

(i) a vertical barrier wall with a leachate extraction system such that an inward gradient of the ground water flow across the wall is created; or

(ii) a design permitted under 329 IAC 2, which was repealed in 1996, that is demonstrated to be at least as stringent as the design standard described in 40 CFR 258.40.

(7) An operational plan for the proposed vertical expansion area, in accordance with the requirements of 329 IAC 10-15-6.

(8) The names and addresses of all owners or last taxpayers of record of property of adjoining land that is within one-half ($\frac{1}{2}$) mile of the solid waste boundary.

(b) Applicants for a vertical expansion modification must comply with the following requirements in the application:

(1) Provide a description of the final cover that meets the requirements of 329 IAC 10-22-6 or 329 IAC 10-22-7, whichever is applicable.

(2) Meet the closure and post-closure requirements of 329 IAC 10-22 and 329 IAC 10-23.

(3) Meet all of the landfill gas control requirements of 329 IAC 10-20-17.

(4) Meet all of the financial assurance requirements of 329 IAC 10-39.

(c) For the purpose of piggybacking, vertical expansion modification applications may be submitted for an alternative design under subsection (d)(1) or (d)(2) for MSWLF units that do not meet the requirements of subsection (a)(6).

(d) The piggyback design consists of adjoining an existing MSWLF unit with an adjacent new MSWLF unit to gain airspace created between two (2) units. The following are requirements for an existing MSWLF unit:

(1) For an existing MSWLF unit that does not have a leachate collection system as described under 329 IAC 2-10-3(1), which was repealed in 1996, and that has not applied for a vertical expansion over the existing MSWLF unit that would exceed the maximum approved elevation of the existing MSWLF unit, the following is required:

(A) The existing MSWLF unit sideslopes that adjoin the new composite liner MSWLF unit must be constructed in the following manner with liner components starting from the top of the existing solid waste placement and extending upward:

(i) Twelve (12) inches of structural fill as described under 329 IAC 10-22-6(b).

(ii) Twenty-four (24) inches of compacted soil as described under 329 IAC 10-17-4 with a hydraulic conductivity of 1×10^{-7} centimeter per second or less.

(iii) Twelve (12) inches of drainage layer as described under 329 IAC 10-17-8 with a hydraulic conductivity of 1×10^{-2} centimeter per second or greater.

(iv) Six (6) inches of protective cover as described under 329 IAC 10-17-11.

(v) The commissioner may approve alternative liner designs or construction technologies under 329 IAC 10-17-15.

(B) Clean fill material as excluded under 329 IAC 10-3-1(1), restricted waste site Type IV waste as described under 329 IAC 10-9-4, or construction/demolition waste may be used to fill and smooth the contours between the MSWLF units.

(2) For an existing MSWLF unit that does not have a leachate collection system as described under 329 IAC 2-10-3(1), which was repealed in 1996, and a vertical expansion is proposed over the sideslopes of the existing MSWLF unit, the newly constructed composite liner MSWLF unit may adjoin only those sideslopes of the existing MSWLF unit that equal or exceed fifteen percent (15%). The existing MSWLF unit sideslopes that equal or exceed fifteen percent (15%) must be constructed in the following manner with liner components starting from the top of the existing solid waste placement and extending upward:

(A) Twelve (12) inches of methane gas venting layer as described under 329 IAC 10-22-6(b) with a hydraulic conductivity of 1×10^{-3} centimeter per second or greater.

- (B) Twenty-four (24) inches of barrier layer consisting of the following:
 - (i) The lower six (6) inches consisting of structural fill as described under 329 IAC 10-22-6(b).
 - (ii) The upper eighteen (18) inches consisting of compacted soil as described under 329 IAC 10-17-4 with a hydraulic conductivity of 1×10^{-7} centimeter per second or less.
- (C) Geomembrane as described under 329 IAC 10-17-6.
- (D) Twelve (12) inches of drainage layer as described under 329 IAC 10-17-8 with a hydraulic conductivity of 1×10^{-2} centimeter per second or greater.
- (E) Eighteen (18) inches of protective cover as described under 329 IAC 10-17-11.
- (F) The commissioner may approve alternative liner designs or construction technologies under 329 IAC 10-17-15.

In addition to this subdivision, the design must provide a perimeter leachate seep collection pipe located at the toe of the existing MSWLF unit where the existing MSWLF unit adjoins the new composite liner MSWLF unit.

- (3) An existing MSWLF unit that has documented evidence of either design as described under subsection (a)(6)(A) through (a)(6)(B) may propose a piggyback design in accordance with this rule.
- (4) Each piggyback design as described in subdivisions (1) and (2) and this subdivision must comply with the following:
 - (A) The final cover described under 329 IAC 10-22-6(b) must extend over the existing MSWLF unit piggyback.
 - (B) The design must include a surface water drainage system for the altered contours where the final cover systems of the adjoining MSWLF units intersect.
 - (C) The design must include erosion control measures for the altered contours where the final cover systems of the adjoining MSWLF units intersect.
 - (D) The design must include an analysis of the existing MSWLF unit subgrade bearing capacity to support the additional solid waste placement within the piggyback.
 - (E) The design must include an analysis of settlement in the existing MSWLF unit subgrade to prevent damage to the piggyback liner or the piggyback leachate collection system as defined under 329 IAC 2-10-3(1), which was repealed in 1996.
 - (F) The design must include an analysis of the existing MSWLF unit side slope stability to support the additional solid waste placement within the piggyback.
 - (G) The design must include a slope stability analysis of the piggyback liner and final cover at the interface of each component.
 - (H) The design must include an analysis of settlement of solid waste placement in the existing MSWLF unit to prevent damage to the piggyback liner or the piggyback leachate collection system as defined under 329 IAC 2-10-3(1), which was repealed in 1996.
 - (I) The design must include a methane gas management system beneath the piggyback liner system.

(e) The commissioner may deny an application for a vertical expansion for a MSWLF that is implementing or has initiated a corrective action program under 329 IAC 10-21-13.

(f) If, as a result of this article, there is an increase in the approved final closure elevations of an MSWLF unit to maintain minimum slope as required by 329 IAC 10-22, then the increase in the approved final closure elevations will not be considered a vertical expansion. The revised final closure elevations must be approved by the commissioner and must comply with the applicable provisions of 329 IAC 10-22. *(Solid Waste Management Board; 329 IAC 10-18-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1841; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2780; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3820)*

Rule 19. Municipal Solid Waste Landfills; Preoperational Requirements and Operational Approval

329 IAC 10-19-1 Preoperational requirements and operational approval

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) A new MSWLF or lateral expansion that is permitted under this article must not accept solid waste before the owner, operator, or permittee submits to the commissioner a certification of completion. The certification of completion is a written statement by the owner, operator, or permittee that certifies the following:

- (1) A construction certification report (CCR) has been prepared by a professional engineer and has been submitted to the commissioner. In the CCR, the professional engineer shall certify that the construction of the liner system components proceeded in accordance with the approved construction plans. The CCR must also include the following items:
 - (A) The following information for all components of the liner system:
 - (i) Documentation provided by the manufacturer that describes quality control and quality assurance tests conducted on raw materials and products used in the construction of the liner system component, including a description of methods for sample selection and the frequency with which tests were conducted.
 - (ii) Certification that the CQA/CQC tests were conducted in accordance with the approved construction plan, or as specified by the commissioner.
 - (iii) A summary of the results of all testing, including documentation of any failed test results.

- (iv) A description of corrective measures taken in response to failed tests.
 - (v) A description of all retesting conducted and the results of those tests.
 - (vi) A description of the previous relevant work experience and qualifications of the field crew foreman in charge of liner installation.
- (B) The following information for the soil component of the liner system:
- (i) All measures taken to prevent or remedy soil liner damage from either desiccation or freezing, both during and after construction.
 - (ii) The results of all testing required in Table 1 and Table 2 of 329 IAC 10-17-5(a), including:
 - (AA) description of steps taken to correct any improperly constructed soil material; and
 - (BB) test frequencies.
 - (iii) Certification that construction quality control testing indicated the soil liner material met the applicable hydraulic conductivity requirements.
- (C) The following information for the geomembrane component of the liner system:
- (i) Certification that the test seams were made:
 - (AA) at the start of work for each seaming crew;
 - (BB) after every four (4) hours of continuous seaming;
 - (CC) every time seam equipment is changed;
 - (DD) when significant changes in geomembrane temperature are observed; and
 - (EE) as additionally required in the approved construction plans.
 - (ii) Certification that field seams were nondestructively tested using a method in accordance with the Geosynthetic Research Institute (GRI), the American Society for Testing and Materials (ASTM), the National Sanitation Foundation (NSF), current industry standards, or with construction plans and specifications.
 - (iii) Certification that all seams that could not be nondestructively tested were overlain with geomembrane material of the same type.
 - (iv) Certification that a professional engineer monitored all nondestructive testing, informed the installer of any required repairs, and inspected the seaming and patching operation for uniformity and completeness.
 - (v) Records of:
 - (AA) the locations where samples were taken;
 - (BB) the name of the person conducting the tests; and
 - (CC) the results of all tests.
- (D) If an optional drainage layer filter is used in the liner system design, an assessment of the geotextile filter that includes the following information:
- (i) Polymer property density.
 - (ii) Polymer type.
 - (iii) Ultraviolet stability.
 - (iv) Mechanical properties.
 - (v) Tensile strength.
 - (vi) Permittivity.
 - (vii) Apparent opening size.
 - (viii) Puncture strength.
- (E) Test results documenting the following:
- (i) The chemical compatibility of the geomembrane and leachate collection pipes with waste and leachate. Relevant compatibility test results may be obtained from the manufacturer. If deemed necessary by the commissioner, additional compatibility testing may be required.
 - (ii) Adequate transmissivity upon the maximum compressive load for any geosynthetic material used in a drainage layer.
- (2) Certifications by a professional engineer or a certified professional geologist, whichever is appropriate, have been submitted to the commissioner to certify the following:
- (A) Initial site development and construction has been completed in accordance with the plot plans specified under 329 IAC 10-15-2 and in accordance with any preoperational conditions imposed as conditions in the facility permit.
 - (B) Identifiable boundary markers have been established that delineate the approved facility boundaries and the solid waste boundary.
 - (C) Permanent on-site benchmarks have been established with latitude and longitude and Universal Transverse Mercator coordinates, where available, and with vertical (mean sea level elevation) and horizontal control, such that no portion of the constructed solid waste disposal area is further than one thousand (1,000) feet from a benchmark, unless a greater distance is:
 - (i) necessary to avoid placement of benchmarks on filled areas; and

(ii) approved by the commissioner.

(D) The installation of all required ground water monitoring wells and piezometers and any required road leading to a well or piezometer has been completed.

(3) The following items have been submitted to the commissioner:

(A) A plot plan indicating location, mean sea level elevations, and identification of all ground water monitoring wells and piezometers.

(B) A copy of all ground water monitoring well and piezometer logs, including diagrammatical drilling logs and diagrammatical design and construction logs.

(C) From each well in the monitoring system, the results of the first of the four (4) required water level measurements and four (4) independent ground water sampling analyses for the constituents in 329 IAC 10-21-15(a) (Table 1A). The remaining water level measurements and sampling analyses must be submitted, along with an initial statistical evaluation of the ground water quality data, no later than six (6) months after the initial receipt of waste at the MSWLF unit.

(D) A ground water potentiometric - surface map or a flow map, as described under 329 IAC 10-21-1(p).

(4) All applicable post construction care procedures were followed.

(b) Upon satisfying all the requirements of subsection (a), a new MSWLF or lateral expansion permitted under this article may begin accepting waste in accordance with this article and with any additional permit conditions, unless the commissioner denies operational approval within twenty-one (21) days of receipt of the certification of completion. (*Solid Waste Management Board; 329 IAC 10-19-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1843; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2782; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3822*)

Rule 20. Municipal Solid Waste Landfills; Operational Requirements

329 IAC 10-20-1 Access control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-18; IC 13-20-2; IC 36-9-30

Sec. 1. (a) MSWLFs must be accessible by means of established roadways only.

(b) Solid waste must be deposited at the MSWLF only when operating personnel are on duty. Collection containers may be placed outside the MSWLF entrance so that solid waste may be deposited after hours.

(c) The owner, operator, or permittee of all MSWLFs shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using effective artificial barriers or effective natural barriers, or both, as appropriate to protect human health and the environment. (*Solid Waste Management Board; 329 IAC 10-20-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1845; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3823; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-2 On-site roads

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. (a) On-site roads that provide access to disposal areas must be passable to vehicles using these areas. The owner, operator, or permittee shall maintain a minimum lane width of:

(1) ten (10) feet for one-way directional traffic; or

(2) twenty-two (22) feet for two-way directional traffic.

(b) The owner, operator, or permittee shall construct and maintain on-site roads in such a way as to minimize the tracking of mud or soil material from the MSWLF onto access roads and to provide and maintain equipment to remove any such mud or soil material that is tracked onto the access roads. Mud or soil material tracked onto access roads must either be collected and returned on-site or removed.

(c) The use of water to control dust or remove mud or soil material from an on-site road surface or an access road must not result in the discharge of sediment directly to surface water. Dust must be controlled by effective means so that it does not constitute or contribute to a nuisance, a health hazard, or a safety hazard.

(d) The owner, operator, or permittee shall provide adequate space on-site for hauling vehicles waiting to unload waste or recyclables at the MSWLF to prevent parking or congestion on off-site roads. (*Solid Waste Management Board; 329 IAC 10-20-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1845; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2783; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3824; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-3 Signs

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) For all MSWLFs, a sign of at least sixteen (16) square feet must be erected at each MSWLF entrance. The sign must identify the following:

- (1) The MSWLF's name.
 - (2) The operating schedule.
 - (3) The type of solid waste land disposal facility.
 - (4) The MSWLF permit number.
 - (5) The name and phone number of a designated emergency contact person to be contacted in case of an emergency.
- (b) For purposes of subsection (a)(5), the designated emergency contact person shall be the following:
- (1) Authorized to respond to a reported emergency or be capable of contacting a person authorized to respond to a reported emergency.
 - (2) One (1) of the following:
 - (A) An employee or contractor of the facility operator.
 - (B) An answering service who can contact facility emergency personnel.
 - (C) For a municipally owned facility, a local emergency entity and telephone number may be used.

(c) Traffic signs or other devices, as needed, must be provided to promote an orderly traffic pattern to and from the discharge area. (*Solid Waste Management Board; 329 IAC 10-20-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1845; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2784; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3824; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-4 Sanitation

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 15-2.1-16; IC 36-9-30

Sec. 4. (a) The owner, operator, or permittee of all MSWLFs shall prevent or control on-site populations of disease vectors to prevent a nuisance and to use techniques appropriate for the protection of human health and the environment.

(b) Cattle, hogs, poultry, or other livestock are prohibited from any filled area that has not received final cover and vegetation.

(c) Dust must be controlled by effective means so that it does not constitute or contribute to a nuisance, a health hazard, or a safety hazard.

(d) Solid waste must be confined to an area that can be effectively maintained, operated, and controlled. Fences or other effective barriers must be utilized to control windblown materials and litter so that they do not constitute or contribute to a nuisance.

(e) Windblown materials and litter within the facility boundaries must be collected and buried daily. Debris blown off the facility boundaries must be cleaned up immediately.

(f) Disposal of dead animals must be accomplished in accordance with IC 15-2.1-16.

(g) Collection containers must be maintained and operated in the following manner:

(1) Collection containers placed outside the MSWLF entrance for the collection of solid waste after hours must be emptied and the solid waste properly disposed of at a frequency that will minimize odors and control disease vectors, but in any event, no less than once in every twenty-four (24) hours for MSWLFs open twenty-four (24) hours a day, or at the end of each working day for those MSWLFs not open twenty-four (24) hours a day. Areas around the containers must be maintained in a sanitary and litter-free condition.

(2) Collection containers placed within the MSWLF for the collection of solid waste must be emptied and the solid waste properly disposed of at a frequency that will minimize odors and control disease vectors, but in no event, less than once in every twenty-four (24) hours for MSWLFs open twenty-four (24) hours a day, or at the end of each working day for those MSWLFs not open twenty-four (24) hours a day. Areas around the containers must be maintained in a sanitary and litter-free condition.

(3) Collection containers placed at the MSWLF for the collection of recyclables must be emptied at a frequency that will minimize odors and control disease vectors. Areas around the container must be maintained in a sanitary and litter-free condition. Containers for the collection of recyclables that may become windblown must be equipped with a cover.

(h) The owner, operator, or permittee of all MSWLFs shall not cause or allow the storage, containment, processing, or disposal of solid waste in a manner that creates a threat to human health or the environment, including the creation of air or water pollution. (*Solid Waste Management Board; 329 IAC 10-20-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1845; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3824; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-5 Scavenging (Repealed)

Sec. 5. (*Repealed by Solid Waste Management Board; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3875*)

329 IAC 10-20-6 Salvaging

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 6. (a) Salvaging on-site at a MSWLF must be done only under the supervision of the owner, operator, or permittee and must not interfere with the MSWLF operations.

(b) Salvaged or recycled materials must be stored in buildings or transportable containers while awaiting removal from the MSWLF. Recyclable materials that are baled in a manner that protects the contents from the weather while awaiting removal from the MSWLF are also acceptable. Salvaged and recycled material must be stored in a manner that does not create litter, fire, or nuisance. Alternative methods of storing salvaged materials must have prior approval from the commissioner. Approval may be granted at the request of the owner, operator, or permittee if the owner, operator, or permittee can demonstrate to the commissioner that the alternative method will provide a comparable level of environmental protection.

(c) Scavenging is prohibited. (*Solid Waste Management Board; 329 IAC 10-20-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1846; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2784; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3825; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-7 Safety requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) Safety devices must be provided on all rolling equipment, including the following:

(1) Roll over protection must be on all rolling equipment that:

- (A) is used for the construction of the site;
- (B) is used for soil stabilization;
- (C) is used for maintenance;
- (D) is used for vegetative maintenance on filled areas;
- (E) comes directly in contact with solid waste; or
- (F) comes directly in contact with the operations involved in covering the solid waste.

(2) Fire extinguishers that are checked and safety tagged annually.

(b) A first aid kit must be available at the MSWLF.

(c) A telephone must be provided at the MSWLF.

(d) Personnel must be provided with the following:

- (1) Adequately heated and lighted shelters.
- (2) Potable drinking water supply.
- (3) Sanitary restrooms.

(*Solid Waste Management Board; 329 IAC 10-20-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1846; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2784; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3825; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-8 Records and reports

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 24-6; IC 36-9-30

Sec. 8. (a) The owner, operator, or permittee of a MSWLF shall record and retain at the MSWLF, in an operating record or in an alternative location approved by the commissioner, all MSWLF records, reports, and plans required by this article, including the following:

(1) An up-to-date copy of the plans and specifications approved by the commissioner in granting the permit.

(2) A copy of the current permit approved by the commissioner, including any modifications submitted to the commissioner and the response of the commissioner.

(3) A plot plan that must be updated quarterly. The owner, operator, or permittee shall maintain a log indicating dates of quarterly updates. The plot plan must describe the following:

- (A) Areas of excavation.
- (B) Areas of current filling.
- (C) Areas under intermediate cover.
- (D) Filled areas lacking final cover.
- (E) Finished areas with final cover; contoured and seeded.

(4) Copies of department operating inspection reports during the preceding twelve (12) months.

(5) An inspection log as required by section 28(c) of this rule.

- (6) A contour map resulting from the annual survey required under section 24(c) of this rule.
- (7) All special waste disposal notifications, certifications, verification notices, notices of denial, site-specific approvals, documentation of waste determinations, and quarterly reports required under 329 IAC 10-8.1.
- (8) Any location restriction demonstration required under 329 IAC 10-16.
- (9) Inspection records, training procedures, and notification procedures required by section 23 of this rule.
- (10) Gas monitoring results from monitoring and any remediation plans required by section 17 of this rule.
- (11) Any gas condensate testing results and amounts generated recorded on a weekly basis.
- (12) Any leachate testing results and weekly leachate pumping quantities.
- (13) Any MSWLF design documentation for placement of leachate or gas condensate in a MSWLF as required under section 27(a)(2) of this rule.
- (14) Any demonstration, certification, finding, monitoring, testing, or analytical data required by 329 IAC 10-21. The owner, operator, or permittee shall maintain records of all monitoring information and monitoring activities, including the following:
 - (A) The date, exact place, and time of the sampling or measurements.
 - (B) The person or persons who performed the sampling or measurements.
 - (C) The date or dates analyses were performed.
 - (D) The person or persons who performed the analyses.
 - (E) The analytical techniques or methods used.
 - (F) The results of such measurements or analyses.
- (15) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by 329 IAC 10-22 and 329 IAC 10-23.
- (16) Any cost estimates and financial assurance documentation required by 329 IAC 10-39.
- (17) Under 329 IAC 11-15-4(b), the owner, operator, or permittee of the MSWLF to which the municipal waste is transported shall retain each manifest for one (1) year and send one (1) copy of each manifest to the commissioner within three (3) months after receiving the manifest. The manifests must be retained on-site at the MSWLF and must be made available to the commissioner's staff upon request.
- (b) All information contained in the operating record and self-inspections must be furnished upon request to any representative of the commissioner.
- (c) All reports submitted to the commissioner must be unbound or bound in a three-hole notebook and preferably copied on both sides of the pages.
- (d) The commissioner may set alternative schedules for record keeping and notification requirements except for 329 IAC 10-16-1(d) and 329 IAC 10-21-13. (*Solid Waste Management Board; 329 IAC 10-20-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1846; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1727, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2785, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3826; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-9 Open burning

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 9. Open burning of solid waste is prohibited at all MSWLFs. (*Solid Waste Management Board; 329 IAC 10-20-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1847; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3826; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-10 Waste deposit and compaction

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

- Sec. 10. (a) The first layer of waste placed in the MSWLF unit must be:
- (1) placed directly above the protective cover of the liner system;
 - (2) free of large debris that may puncture or tear the liner; and
 - (3) a minimum of four (4) feet in depth.
- (b) All waste other than the first layer of waste shall be spread and compacted:
- (1) at a working face that has a maximum slope of 3:1 (run over rise); and
 - (2) in layers not exceeding two (2) feet in thickness.
- (c) Compaction must be completed as follows:
- (1) Occur on a sloped working face.
 - (2) Be accomplished with repeated passes of landfill compactor equipment or equivalent equipment. Use of tracked vehicles

for compaction shall be limited to temporary replacement of regular compaction equipment while it is under maintenance or repair.

(Solid Waste Management Board; 329 IAC 10-20-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1847; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3827; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-20-11 Diversion of surface water and run-on and run-off control systems

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 11. (a) The owner, operator, or permittee of MSWLFs shall design, construct, and maintain the following:

(1) A run-on control system to prevent flow onto the active portion of the MSWLF during the peak discharge from a twenty-five (25) year storm.

(2) A run-off control system from the active portion of the MSWLF to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(b) The owner, operator, or permittee of MSWLFs shall not deposit solid waste in standing or ponded water.

(c) Run-off from the active portion of the MSWLF must be handled in accordance with 327 IAC 15-5, 327 IAC 15-6, and the discharge must meet the effluent limitations of the National Pollutant Discharge Elimination System under 327 IAC 5. *(Solid Waste Management Board; 329 IAC 10-20-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1848; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3827; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-20-12 Erosion and sedimentation control measures; general requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 12. (a) Erosion and sedimentation control measures must be instituted to minimize the off site migration of any sediment. All run-off from disturbed acreage must pass through a sedimentation basin or an approved alternative sediment control practice. The commissioner may require additional erosion and sediment control measures.

(b) A storm water or sedimentation basin or series of basins permitted and constructed under this article must be constructed in accordance with the following:

(1) Be designed to handle, simultaneously, the run-off resulting from the ten (10) year, twenty-four (24) hour precipitation event and the sediment storage volume required by subdivision (3).

(2) An appropriate combination of principal and emergency spillway shall be provided to discharge safely the run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event with a minimum of two (2) feet of freeboard.

(3) Provide a minimum of three (3) years of sediment storage volume. The following requirements apply:

(A) Sediment must be removed from sedimentation basins when the volume of sediment accumulates to fifty percent (50%) or more of the designed sediment storage volume.

(B) A sediment storage volume of less than three (3) years may be approved by the commissioner if an annual approved maintenance program will be performed.

(4) Provide a detention time of at least twenty-four (24) hours for the ten (10) year, twenty-four (24) hour precipitation event. A detention time of less than twenty-four (24) hours may be approved by the commissioner if the following is demonstrated by the owner, operator, or permittee:

(A) The discharge will not result in the release of a significant quantity of sediment from the MSWLF.

(B) Will not violate any local, state, or federal laws pertaining to discharges.

(5) The principal spillway must be located at a height above the maximum elevation of the designed sediment storage volume required by subdivision (3).

(6) Discharge in compliance with all applicable state and federal laws.

(7) The length-to-width ratio of the flow path shall be 2:1 or greater from the inflow to the outflow. Baffles may be used within the basin to achieve this ratio.

(c) If deemed necessary by the commissioner, additional erosion and sediment control practices may be required in the drainage areas of permanent basins for the purposes of increasing the life of the basin and increasing the overall efficiency of removing sediment from run-off.

(d) Alternatives to the requirements in subsections (b) through (c) may be approved by the commissioner. Factors that will be considered include the following:

(1) The amount of water collected from disturbed areas and undisturbed areas.

(2) Use of erosion control measures on disturbed areas.

(3) Sedimentation control measures utilized in the drainageways.

(e) The commissioner may require the submittal of the following information for any storm water/sedimentation pond or basin

to verify it is designed and constructed properly:

- (1) Basin plan view.
- (2) Typical cross section.
- (3) All the inlet and outlet elevations.
- (4) Assumptions used to size the basin.
- (5) Calculations used.
- (6) Justifications.

(Solid Waste Management Board; 329 IAC 10-20-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1848; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2786; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3827; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-20-13 Cover; general provisions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 13. (a) Except as provided in subsection (c), daily cover for MSWLFs must be earthen material or an alternative daily cover as allowed under section 14.1 of this rule. Intermediate cover for MSWLFs must be Classification ML, earthen material, or other suitable material approved by the commissioner to provide an adequate level of environmental protection. Final cover must be as specified in 329 IAC 10-22-6 or 329 IAC 10-22-7, whichever is applicable.

(b) Cover must be applied and maintained at MSWLFs in accordance with the applicable requirements of this rule and 329 IAC 10-22. Other provisions for cover may be approved by the commissioner if it can be demonstrated that an alternate cover or site design will provide an adequate level of environmental protection.

(c) Daily and intermediate cover for MSWLFs without a:

- (1) leachate collection system; and
- (2) composite liner;

must be soil of Unified Soil Classification ML, CL, MH, CH, or OH, or other suitable material approved by the commissioner to provide an adequate level of environmental protection. Final cover must be as specified in 329 IAC 10-22-6 or 329 IAC 10-22-7, whichever is applicable. *(Solid Waste Management Board; 329 IAC 10-20-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1849; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3828; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-20-14 Daily and intermediate cover requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 14. (a) The owner, operator, or permittee of MSWLFs shall limit the size of the working face to an area that can be covered daily.

(b) Except as provided in subsection (c), the owner, operator, or permittee of all MSWLFs shall apply and compact no less than six (6) inches of soil over all disposed solid waste at the end of each operating day, regardless of weather conditions, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(c) Alternative daily cover must be applied in accordance with section 14.1 of this rule.

(d) The owner, operator, or permittee of MSWLFs that are open continuously shall apply daily cover at least once in every twenty-four (24) hour period as specified in the permit.

(e) A supply of daily cover must be readily available so that the requirements in this section can be met.

(f) The owner, operator, or permittee shall apply and compact intermediate cover of not less than one (1) foot over any point in the fill that has not received solid waste for ninety (90) days or more.

(g) Intermediate cover must be graded to promote surface water drainage and prevent ponding of water.

(h) For any MSWLF areas with intermediate cover, additional erosion and sediment control measures must be implemented within fifteen (15) days after placement of the intermediate cover.

(i) The erosion and sedimentation control measures in subsection (h) may include the following:

- (1) Establishment of vegetation.
- (2) Covering with alternative synthetic cover or liner.
- (3) Other applicable erosion and sedimentation control measures.

(j) Daily and intermediate covers that create an impermeable barrier to the vertical flow of leachate must be altered to allow for leachate flow to the leachate collection system prior to the placement of solid waste on top of the cover. *(Solid Waste Management Board; 329 IAC 10-20-14; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1849; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2787; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3828; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-20-14.1 Alternative daily cover

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-215.1; IC 13-18; IC 13-20; IC 36-9-30

Sec. 14.1. (a) An owner, operator, or permittee of an MSWLF unit with a leachate collection system and composite liner may apply an alternative daily cover (ADC) material under this section. The following must not be applied as ADC:

- (1) Category A special waste.
- (2) Material that contains polychlorinated biphenyl (PCB) concentrations greater than twenty-five (25) parts per million; however, this material cannot be PCB containing as defined by 329 IAC 4-1-1(b) [329 IAC 4 was repealed filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083.].
- (3) Material excluded from special waste requirements that is greater than or equal to seventy-five percent (75%) of the hazardous waste limit under the:

- (A) toxicity characteristic leaching procedure (TCLP) test; or
- (B) extraction procedure toxicity (EP Tox) test;

as applicable.

(b) The following are ADC performance standards:

- (1) The material must meet the disposal requirements for MSWLFs under this article.
- (2) Category B special waste must meet the verification process for disposal under 329 IAC 10-8.1.
- (3) The material must control:
 - (A) blowing litter; and
 - (B) disease vectors.
- (4) The material must not contribute to:
 - (A) fire;
 - (B) odor; or
 - (C) scavenging.
- (5) The material must not be composed of particle sizes that contribute to fugitive dust.
- (6) The material must not pose an exposure threat to workers.
- (7) The maximum dimension of the material, with the exception of geotextile or plastic (tarp), must be fourteen (14) inches or less.

(c) If the ADC is one (1) of the following and meets the performance standards under subsection (b), the owner, operator, or permittee shall apply for an insignificant facility modification under 329 IAC 10-3-3(b) to apply the ADC:

- (1) Altered tires.
- (2) Wood chips.
- (3) Compost.
- (4) Category B foundry sand or foundry sand that is excluded from special waste under IC 13-11-2-215.1(b)(8).
- (5) Geotextile.
- (6) Plastic (tarp).
- (7) Excluded material under 329 IAC 10-3-1(1).
- (8) Dewatered publicly owned treatment works (POTW) sludge.
- (9) Dewatered paper sludge.

(d) If the owner, operator, or permittee intends to apply:

- (1) an ADC that:
 - (A) is not listed under subsection (c); and
 - (B) meets the performance standards under subsection (b); or
- (2) shredder fluff as an ADC;

the owner, operator, or permittee shall apply for an insignificant facility modification under 329 IAC 10-3-3(c).

(e) If the owner, operator, or permittee intends to apply an ADC that does not meet the requirements of subsection (d) and that:

- (1) is not listed under subsection (c); and
- (2) does not meet the performance standards under subsection (b);

the owner, operator, or permittee shall apply for a minor modification under 329 IAC 10-11-6.

(f) An owner, operator, or permittee that applies ADC shall comply with the following requirements:

- (1) Prior to the initial use of any one (1) ADC under this section, the owner, operator, or permittee shall notify the commissioner seven (7) days prior to the initial use of the material.
- (2) The ADC must be used on areas that will have additional solid waste deposited within the next seven (7) working days or as approved by the commissioner. Areas that have ADC exposed for longer than seven (7) working days must be covered with soil under section 13(a) of this rule or as approved by the commissioner.

(3) The ADC must be placed on the working face by the end of each day of operation. ADC, with the exception of geotextile or plastic (tarp), must be applied at a minimum thickness of six (6) inches or as approved by the commissioner. Any solid waste that is not covered by ADC must be covered under section 13(a) of this rule.

(4) The ADC, with the exception of geotextile or plastic (tarp), must:

- (A) not be reapplied as daily cover; or
- (B) be applied as approved by the commissioner.

(5) The owner, operator, or permittee shall retain the following information in the operating record for a period of one (1) year:

- (A) The ADC source.
- (B) Documentation that the ADC complies with the performance standards under subsection (b), if applicable.

(6) The ADC must be stockpiled under applicable federal, state, and local regulations.

(7) An alternative supply of acceptable daily cover under section 13 of this rule must be readily available if the ADC does not meet the requirements of this section.

(g) The commissioner may:

- (1) modify the procedures under subsection (f) for using; or
- (2) prohibit the use of;

any material that does not meet the requirements of this section. (*Solid Waste Management Board; 329 IAC 10-20-14.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3829; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-15 Cover storage sites and borrow pits requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 15. This section applies to cover storage sites and borrow pits located within real property boundaries of the MSWLF.

(b) The owner, operator, or permittee shall grade cover storage sites and borrow pits to:

- (1) minimize erosion;
 - (2) minimize sedimentation off of the property boundaries;
 - (3) promote surface water drainage;
 - (4) minimize the ponding of water, unless ponding in a borrow pit is done for sedimentation purposes or planned construction of a lake; and
 - (5) minimize blowing soil.
- (c) Vegetation must be cleared only as necessary.

(d) Roads at the cover storage sites and borrow pits must be constructed and maintained in such a way as to minimize the tracking of mud or soil material from the site onto access roads. The owner, operator, or permittee shall provide and maintain equipment to remove any such mud or soil material that is tracked onto access roads. Mud or soil material tracked onto access roads must either be collected and returned on-site or removed.

(e) The use of water to control dust or remove mud or soil material from an on-site road surface or an access road must not result in the discharge of sediment directly to surface water. Dust must be controlled by effective means so that it does not constitute or contribute to a nuisance, a health hazard, or a safety hazard.

(f) Topsoil must be removed in a separate layer prior to preparation of an area for disposal or other surface disturbances. If the topsoil is not promptly redistributed as cover, it must be stockpiled and temporarily vegetated as soon as weather conditions permit or otherwise protected from:

- (1) wind and water erosion;
- (2) unnecessary compaction; and
- (3) contaminants;

that lessen the capability of materials to support vegetation when redistributed on the site.

(g) When the owner, operator, or permittee is finished with a cover storage site or borrow pits, the slope must not be greater than thirty-three percent (33%). (*Solid Waste Management Board; 329 IAC 10-20-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1849; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2787; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3830; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-16 Grading and soil stabilization for intermediate cover and final cover

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. (a) Cover materials applied as required by section 14(f) of this rule for intermediate cover and 329 IAC 10-22 for final cover must be continuously maintained, including application and compaction of additional cover as needed to maintain

required depth.

(b) All MSWLFs must be graded to promote surface water drainage and to prevent the ponding of water on previously filled areas.

(c) Vegetation must be cleared only as necessary.

(d) Final cover must be vegetated as follows:

(1) A grass or a diverse, effective, and permanent vegetative cover of the same seasonal variety that supports the approved post-closure land use must be established and maintained continuously on any portion of the MSWLF that has received final cover under 329 IAC 10-22, except where other provisions for land use have been approved by the commissioner.

(2) No trees, woody shrubs, or deep rooted plants may be planted or allowed to grow on the vegetated final cover unless approved by the commissioner based on a demonstration that the roots will not penetrate the final cover cap.

(e) Anchored mulch or erosion control blankets or both must be applied on all permanent seeding applications to control erosion, promote germination of seeds, and increase the moisture retention of the soil.

(f) During those times of the year when adequate vegetation to control erosion cannot be established, anchored mulch, or a suitable alternative, must be applied to achieve an effective erosion control layer.

(g) Vegetation or anchored mulch or both must be maintained and reapplied as necessary to sustain an effective erosion control layer.

(h) Rills and gullies deeper than nine (9) inches that have formed in areas with intermediate or final cover must be filled, graded, reseeded, and mulched or otherwise stabilized.

(i) Vegetation on closed portions of the MSWLF must be mowed as necessary. (*Solid Waste Management Board; 329 IAC 10-20-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1850; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3831; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-17 Explosive gases

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 17. (a) The owner, operator, or permittee of all MSWLFs shall ensure that:

(1) the concentration of methane gas generated by the MSWLF does not exceed twenty-five percent (25%) of the lower explosive limit for methane in MSWLF structures, excluding gas control, leachate collection manholes, or recovery system components; and

(2) the concentration of methane gas does not exceed the lower explosive limit for methane at the facility boundary.

(b) The owner, operator, or permittee of all MSWLFs shall:

(1) implement a routine methane monitoring program approved by the commissioner to ensure that the standards of subsection

(a) are met; or

(2) implement a routine methane monitoring program as proposed to the commissioner:

(A) if a routine methane monitoring program has not been approved by the commissioner; and

(B) until a routine methane monitoring program approved by the commissioner is implemented under subdivision (1).

(c) The type and frequency of monitoring must be determined based on the following:

(1) Soil conditions.

(2) The hydrogeologic conditions surrounding the MSWLF.

(3) The hydraulic conditions surrounding the MSWLF.

(4) The location of MSWLF structures and property boundaries.

The minimum frequency of monitoring must be quarterly.

(d) If methane gas levels exceeding the limits specified in subsection (a) are detected, the owner, operator, or permittee shall complete the following:

(1) Immediately take all necessary steps to ensure protection of human health.

(2) Notify the commissioner within twenty-four (24) hours or the next business day if the detection occurs over a weekend or holiday.

(3) Within seven (7) days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health.

(4) Within sixty (60) days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the commissioner that the plan has been implemented. The plan must describe the nature and extent of the problem and the proposed remedy.

(e) The commissioner may establish alternative schedules for compliance with subsection (d)(3) and (d)(4). (*Solid Waste Management Board; 329 IAC 10-20-17; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1850; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2788; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3831; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-18 Surface leachate control

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20-2; IC 36-9-30

Sec. 18. (a) Any surface movement of leachate outside of the solid waste boundary, which is not being immediately and effectively managed, controlled, and contained, is prohibited, except as specified in the MSWLF permit.

(b) Any leachate on the surface of the MSWLF must be immediately managed or controlled.

(c) Leachate is prohibited from entering any surface water drainage systems. (*Solid Waste Management Board; 329 IAC 10-20-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1851; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3832; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-19 Liner leak detection program

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 19. (a) The owner, operator, or permittee must implement a program as specified in 329 IAC 10-15-1(14) and in accordance with 329 IAC 10-15-10 to detect and assess liquids that have leaked through the liner system into the leak detection zone.

(b) If the flow rate into the leak detection zone exceeds the action leakage rate for any sump, the owner, operator, or permittee must:

- (1) notify the commissioner in writing of the exceedance within seven (7) days of the determination;
 - (2) obtain and analyze samples from the leak detection zone and arrange for analyses of the samples in accordance with the leak detection plan as specified in 329 IAC 10-15-10(3);
 - (3) submit a written assessment to the commissioner within fourteen (14) days of the determination that includes:
 - (A) the magnitude of the leakage;
 - (B) the likely source of the liquids;
 - (C) the possible location, size, and cause of the leak; and
 - (D) short term response measures that have been taken and that are planned;
 - (4) determine any additional short term or longer term response measures that will be taken; and
 - (5) within sixty (60) days of the notification that the action leakage rate was exceeded, submit to the commissioner:
 - (A) the results of the chemical analyses of the samples specified in subdivision (2); and
 - (B) an assessment of the potential for additional leakage and the potential for release of the liquids into the environment.
- (c) Records of liquid quantities and liquid characteristics monitored by the leak detection program must be:
- (1) maintained through the active life, closure, and post-closure periods; and
 - (2) made available to the commissioner upon request.

(*Solid Waste Management Board; 329 IAC 10-20-19; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1851; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2788; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3832; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-20 Leachate collection, leachate removal, and leachate disposal

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 20. (a) The owner, operator, or permittee of an MSWLF that has a previously existing leachate collection or leachate removal system shall develop a leachate contingency plan within six (6) months of the effective date of this rule. At a minimum, the plan must address all the requirements listed in 329 IAC 10-15-11(a).

(b) The owner, operator, or permittee shall:

- (1) operate the leachate collection or leachate removal system in compliance with the design standards and plans specified in 329 IAC 10-15 and 329 IAC 10-17-8 through 329 IAC 10-17-9;
- (2) monitor and maintain the leachate collection or leachate removal system as required in the leachate contingency plan under 329 IAC 10-15-11(a)(1) through 329 IAC 10-15-11(a)(2) or subsection (a); and
- (3) implement the leachate contingency plan required under 329 IAC 10-15-11(a)(4) or subsection (a), if the leachate collection or leachate removal system is not operation or leachate levels are exceeded.

(c) Any discharge or disposal of collected leachate must be accomplished in accordance with all applicable local, state, and federal laws.

(d) The leachate contingency plans required by 329 IAC 10-15-11 and subsection (a) must be retained in the operating record on-site at the MSWLF as required by section 8(a) of this rule and be made available to representatives of the department upon request. (*Solid Waste Management Board; 329 IAC 10-20-20; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1852; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3832; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-21 Leachate recycling

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 21. (a) Provided prior approval from the commissioner is obtained, leachate generated by an MSWLF may be recycled into portions of an MSWLF unit that is designed with either of the following:

- (1) A composite liner and a leachate collection system that meet the requirements of 329 IAC 10-17.
- (2) An alternative design that is permitted under either:
 - (A) 329 IAC 10-17-15; or
 - (B) 329 IAC 2, which was repealed in 1996, provided the design is demonstrated to be at least as stringent as the design standards described in 40 CFR 258.40.

(b) To obtain approval, the owner, operator, or permittee of the MSWLF unit receiving the recycled leachate must submit to the department the following:

- (1) A demonstration that the depth of leachate on the composite liner will not exceed one (1) foot.
- (2) A narrative description of the current status of ground water monitoring under 329 IAC 10-21.
- (3) A demonstration that there is no indication of liner failure as determined by monitoring of the leak detection system, described in section 19 of this rule, if a leak detection system is required.
- (4) A demonstration that the proposed method of recycling shall not be responsible for odors, contamination of run-off, or damage to vegetation.

(c) Leachate recycling must not create odors, contamination of run-off, or damage to vegetation. (*Solid Waste Management Board; 329 IAC 10-20-21; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1852; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2789; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3833; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-22 Ground water monitoring wells (Repealed)

Sec. 22. (*Repealed by Solid Waste Management Board; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3875*)

329 IAC 10-20-23 Control program for regulated hazardous waste, PCB waste, and unauthorized solid waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 23. (a) The owner, operator, or permittee of an MSWLF shall implement a program at the MSWLF for detecting and preventing the disposal of regulated hazardous waste as determined by 40 CFR 261.3 or 329 IAC 3.1, polychlorinated biphenyls (PCB) waste as defined in 40 CFR 761, and unauthorized solid waste. This program must include, at a minimum, the following:

- (1) Random inspections of incoming loads unless the owner, operator, or permittee takes other steps to ensure that incoming loads do not contain regulated hazardous waste, PCB waste, or unauthorized solid waste. A random inspection program must include the following:
 - (A) An inspection conducted by an individual, or individuals, trained to identify regulated hazardous waste, PCB waste, or unauthorized solid waste that would not be acceptable for disposal at the MSWLF.
 - (B) Loads must be inspected prior to actual disposal of the waste at the working face to provide the owner, operator, or permittee the opportunity to refuse to accept the waste.
 - (C) Loads must be inspected in a manner that does not present a threat to human health and the environment.
 - (D) The frequency must result in screening at least two percent (2%) of all waste loads.
 - (E) The commissioner may require additional inspections or steps be taken to adequately control the receipt of regulated hazardous waste, PCB waste, and unauthorized solid waste.
 - (F) This program may be modified to increase the frequency based on results of the initial program.

(2) If an alternative program to random inspections is going to be utilized then a description of the alternative program must be maintained on site and provided to the commissioner upon request. At a minimum an alternative program must provide an equivalent level of detection or protection as the random inspections describe in subdivision (1). The alternative program may be reviewed and modified by the commissioner to assure equivalency.

(3) Records of any inspections.

(4) Training of MSWLF personnel to identify or recognize the visual indications of regulated hazardous waste, PCB waste, or unauthorized solid waste.

(5) Written notification must be mailed within forty-eight (48) hours, or two (2) working days, to the commissioner if a regulated hazardous waste, or PCB waste is discovered at the MSWLF.

(b) If the owner, operator, or permittee of a MSWLF detects regulated hazardous waste, PCB waste, or unauthorized solid waste, the owner, operator, or permittee shall remove and segregate the waste immediately. The waste shall be handled as follows:

(1) Any regulated hazardous waste, PCB waste, or unauthorized solid waste that is detected by the owner, operator, or permittee must be managed in accordance with applicable Indiana and federal regulations.

(2) Any regulated hazardous waste, PCB waste, or unauthorized solid waste that is segregated must be adequately secured and contained to prevent leakage or a threat to human health and the environment.

(3) The owner, operator, or permittee shall cause the waste to be removed as soon as practicable, but not to exceed ninety (90) days after discovery, by a person authorized by applicable state and federal regulations to transport such waste to a MSWLF approved by applicable state and federal regulations to receive it for treatment, storage, disposal, transfer, processing, recycling, or composting.

(4) The owner, operator, or permittee shall maintain a record on site identifying the date of discovery of the waste, the identity of the waste, including source, if known, and a description of how the waste was managed.

(Solid Waste Management Board; 329 IAC 10-20-23; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1852; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3833; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-20-24 Survey requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 24. (a) The owner, operator, or permittee of an MSWLF shall maintain the series of identifiable boundary markers required under 329 IAC 10-19-1(a)(2)(B) to delineate the approved solid waste land disposal facility boundaries and approved solid waste boundaries for the life of the MSWLF.

(b) The owner, operator, or permittee shall maintain the on-site benchmarks required under 329 IAC 10-19-1(a)(2)(C) so that no portion of the proposed solid waste disposal area is further than one thousand (1,000) feet from a benchmark unless a greater distance is necessary to avoid the placement of benchmarks on filled areas and is approved by the commissioner.

(c) The owner, operator, or permittee shall conduct an annual survey between October 1 and December 31 of each year for the purpose of establishing a contour map that indicates existing contours of the MSWLF and the existing limits of solid waste disposed at the MSWLF. The contour map must be done at the same scale as the final contour map required under 329 IAC 10-15-2. The contour map must indicate the day the survey was conducted and must be submitted to the department by February 15 of the year following the survey in a paper copy form as required by 329 IAC 10-15-2(b). In addition to the paper copy, a copy may also be submitted electronically.

(d) The owner, operator, or permittee of a currently permitted MSWLF shall submit a present contour map and a proposed final contour map on paper copy form as required by 329 IAC 10-15-2(b). In addition to the paper copy forms, a copy may also be submitted electronically. No subsequent annual submissions of the final contour map will be necessary unless there is a change to the approved final contours. *(Solid Waste Management Board; 329 IAC 10-20-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1853; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2789; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3834; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-20-25 Air criteria

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 25. (a) The owner, operator, or permittee of MSWLFs shall ensure that the an MSWLF does not violate any applicable requirements developed under Indiana's State Implementation Plan (SIP) approved or promulgated by the United States Environmental Protection Agency administrator under Section 110 of the Clean Air Act, 42 U.S.C. 7401 et seq., as amended November 15, 1990.

(b) The owner, operator, or permittee of an MSWLF shall not cause or allow the storage, containment, processing, or disposal of solid waste in a manner that creates a threat to human health or the environment, including the creation of a fire hazard or air pollution. *(Solid Waste Management Board; 329 IAC 10-20-25; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1853; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3834; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-20-26 Surface water requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 26. (a) The owner, operator, or permittee of an MSWLF shall not cause a discharge of pollutants into waters of the state, including wetlands, that violates any requirements of 327 IAC and the Clean Water Act, including the National Pollutant Discharge Elimination System requirements, under Section 402 of the Clean Water Act, 33 U.S.C. 1342, as amended October 31, 1992.

(b) The owner, operator, or permittee of an MSWLF shall not cause the discharge of a nonpoint source of pollution to waters

of the United States, including wetlands, that violates any requirement of an area wide or statewide water quality management plan that has been approved under Section 208, 33 U.S.C. 1288, as amended February 4, 1987, or Section 319, 33 U.S.C. 1329, as added February 4, 1987, of the Clean Water Act. (*Solid Waste Management Board; 329 IAC 10-20-26; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1853; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3835; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-27 Liquids restrictions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 27. (a) Bulk or noncontainerized liquid waste must not be placed in a MSWLF unless either of the following is established:

(1) The liquid is an incidental liquid or rainwater normally associated with routine solid waste disposal.

(2) The waste is leachate or gas condensate derived from the MSWLF and the MSWLF unit receiving such waste, whether it is a new or existing MSWLF or lateral expansion, is designed with a composite liner and leachate collection system. The owner, operator, or permittee shall place the demonstration specified in section 21 of this rule in the operating record and notify the commissioner that it has been placed in the operating record.

(b) Containers holding liquid waste must not be placed in a MSWLF unless:

(1) free liquids are in containers equal to or less than five (5) gallons in size in consumer packaging not to exceed one (1) cubic yard total volume per disposal; or

(2) food products that contain free liquids are in containers or packaging equal to or less than five (5) gallons in size.

(c) Other liquids may be placed in the MSWLF, as authorized by the commissioner, where it has been determined that the disposal of the liquids will not create a threat to human health or the environment. (*Solid Waste Management Board; 329 IAC 10-20-27; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1854; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2790; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3835; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-28 Self-inspections

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 28. (a) The owner, operator, or permittee of an MSWLF shall monitor and inspect the MSWLF a minimum of at least twice each month for malfunctions, deteriorations, operator errors, discharges, and leachate outcroppings that may cause a release to the environment or a threat to human health.

(b) The owner, operator, or permittee shall promptly correct any deterioration or malfunction of equipment or structures or any other problems revealed by the inspections to comply with the MSWLF's permit and this article and to ensure that no environmental or human health hazard develops. Where a hazard is imminent or has already occurred, remedial action must be taken immediately to correct or repair the hazard.

(c) The owner, operator, or permittee shall record inspections on an inspection form provided by the department or at a minimum, on a form that includes the following:

(1) The date and time of the inspection.

(2) The name of the inspector.

(3) A description of the inspection, including an identification of the specific equipment and structures inspected.

(4) The observations recorded.

(5) The date and nature of any remedial actions implemented or repairs made as a result of the inspection.

These records must be retained at the MSWLF for at least three (3) years from the date of inspection. (*Solid Waste Management Board; 329 IAC 10-20-28; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1854; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3835; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-29 Additional owner, operator, or permittee responsibility for special waste disposal

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-12; IC 13-18-1; IC 13-19; IC 36-9-30

Sec. 29. The owner, operator, or permittee of a MSWLF shall comply with all applicable special waste management and disposal requirements in 329 IAC 10-8.1. (*Solid Waste Management Board; 329 IAC 10-20-29; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1854; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1728, eff one hundred eighty (180) days after filing with the secretary of state; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3835; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-30 Manifest requirements for waste received from transfer stations

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20-4; IC 13-20-6; IC 36-9-30

Sec. 30. (a) As used in this section, “manifest”, “municipal waste”, “operator”, and “waste transfer activities” have the meanings set forth in 329 IAC 11-15-1.

(b) Prior to accepting a shipment of municipal waste from a transfer station located inside or outside of Indiana, a MSWLF must receive a copy of the manifest and must review the manifest to determine whether the items listed under 329 IAC 11-15-3 are included on the manifest.

(c) A MSWLF must not knowingly accept a shipment of municipal waste from a transfer station located inside or outside of Indiana if:

- (1) the municipal waste is not accompanied by a manifest that contains the information required under 329 IAC 11-15-3; or
- (2) the MSWLF has received notice from the department that the commissioner has issued an order under IC 13-20-6-3 or IC 13-20-6-4 that suspends the waste transfer activities within Indiana of the transfer station or operator listed on the manifest accompanying the shipment of municipal waste.

(d) Subsection (c)(2) does not apply unless the department has sent a notice by certified mail, return receipt requested, to the MSWLF indicating that the commissioner has suspended the waste transfer activities of the transfer station or operator listed on the manifest. The notice must contain the following:

- (1) The name of the operator or transfer station subject to the commissioner’s order to suspend waste transfer activities.
- (2) The date on which the waste transfer activities are suspended under the commissioner’s order.
- (3) The acknowledgment number issued to the operator under IC 13-20-6-5(2) if applicable.
- (4) The location of the transfer station if the order applies to a transfer station.

(e) Subsection (c)(2) does not apply after the department has notified a suspended transfer station or operator that waste transfer activities in Indiana may resume. The notice to the formerly suspended transfer station or operator must contain the date on which waste transfer activities may resume. A copy of this notice must be sent by the department, by certified mail, return receipt requested, to each MSWLF that was sent the applicable notice under subsection (d). (*Solid Waste Management Board; 329 IAC 10-20-30; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1855; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2790; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3836; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-31 Requirements for receipt of baled waste

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 31. A MSWLF that receives baled waste for disposal must do the following:

- (1) Remove bales mechanically from the vehicle to minimize human contact with the baled waste.
- (2) Operate in accordance with an approved baled waste management plan as specified in 329 IAC 10-15-9.
- (3) Existing MSWLFs that intend to accept baled waste must operate in accordance with a baled waste management plan, submitted as a minor modification under 329 IAC 10-11-6, that includes the requirements of 329 IAC 10-15-9.

(*Solid Waste Management Board; 329 IAC 10-20-31; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1855; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2790; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3836; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-20-32 Incidental disposal of small amounts of whole waste tires

Authority: IC 13-14-8; IC 13-15-2; IC 13-19-3; IC 13-20-14-1
Affected: IC 13-20-14-1

Sec. 32. (a) IC 13-20-14-1 prohibits the disposal of whole waste tires in a municipal solid waste landfill, except as provided for in this section. The incidental disposal of small amounts of whole waste tires at a municipal solid waste landfill is allowed if the owner, operator, or permittee of that municipal solid waste landfill complies with one (1) of the following options:

- (1) The numeric standard described in subsection (b).
- (2) A procedure that meets the criteria in subsection (c).

(b) The numeric standard for incidental disposal of whole waste tires is no more than one (1) visible whole waste tire for each two hundred fifty (250) tons of municipal solid waste, or no more than two (2) tires per day for a municipal solid waste landfill that receives less than two hundred fifty (250) tons of waste per day.

(c) In lieu of complying with the numeric standard in subsection (b), an owner, operator, or permittee of a municipal solid waste landfill must develop and follow a written procedure. This procedure must:

- (1) be kept at the municipal solid waste landfill with the operating record, or at an alternate location approved by the commissioner under section 8 of this rule;

- (2) be designed to minimize the disposal of whole waste tires by ensuring that those tires that do not meet the definition of incidental disposal at 329 IAC 10-2-91.1 are removed from the municipal solid waste;
 - (3) designate by position and describe the duties of the person who is responsible for minimizing disposal of whole waste tires;
 - (4) provide clear instructions to municipal solid waste landfill employees who handle waste tires and haulers for handling whole waste tires;
 - (5) contain a system for identifying haulers who deliver whole waste tires to the municipal solid waste landfill and for notifying those haulers that the disposal of whole waste tires is prohibited;
 - (6) provide for proper storage and disposal or recycling of tires removed from municipal solid waste; and
 - (7) document reduction in the numbers of whole waste tires incidentally disposed of in that municipal solid waste landfill.
- (d) Regardless of whether a numeric standard under subsection (b) or a procedure under subsection (c) is used, the owner, operator, or permittee shall not dispose of whole waste tires within ten (10) feet of:
- (1) the methane gas venting layer of the final cover system under 329 IAC 10-22-6; or
 - (2) the bottom of the final cover under 329 IAC 10-22-7.

(Solid Waste Management Board; 329 IAC 10-20-32; filed Aug 25, 1997, 9:40 a.m.: 21 IR 75; errata filed Nov 6, 1997, 3:30 p.m.: 21 IR 1349; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 21. Municipal Solid Waste Landfills; Ground Water Monitoring Programs and Corrective Action Program Requirements

329 IAC 10-21-1 General ground water monitoring requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 1. (a) The owner, operator, or permittee of MSWLFs shall comply with the ground water monitoring requirements of this rule according to the following schedule:

(1) Existing MSWLF units and lateral expansions less than or equal to two (2) miles from a drinking water surface or subsurface intake must be in compliance with the applicable ground water monitoring requirements specified in this rule by the effective date of this rule.

(2) Existing MSWLF units and lateral expansions greater than two (2) miles from a drinking water surface or subsurface intake must be in compliance with the applicable ground water monitoring requirements specified in this rule by October 9, 1996.

(3) New MSWLF units must be in compliance with the applicable ground water monitoring requirements specified in this rule before waste can be placed in the unit.

(b) Alternative methods, procedures, or equipment to those prescribed in this rule may be used provided the selected alternative yields results or measurements that are equivalent in accuracy and reliability and the use of the alternative is approved by the commissioner.

(c) The number, spacing, and location of ground water monitoring wells for an existing MSWLF must comply with the MSWLF's permit. The number, spacing, and location of ground water monitoring wells for new MSWLFs must meet the requirements of 329 IAC 10-15-5.

(d) All ground water monitoring wells must be affixed with permanent identification that uniquely identifies each well at the MSWLF. The owner, operator, or permittee shall:

- (1) number;
- (2) label; and
- (3) maintain labels;

on all ground water monitoring wells.

(e) Ground water monitoring wells must be accessible and visible at all times. Access to ground water wells through on-site roads must be available, regardless of weather conditions. Access to monitoring wells for four (4) wheel drive vehicles must be provided to ensure vehicle access throughout any season of the year. Vegetation must be controlled on the on-site roads and around the wells. Access to all ground water monitoring wells approved by the commissioner must be restricted to operating personnel, department personnel, and persons contracted by the owner, operator, or permittee to collect samples.

(f) Ground water monitoring wells and equipment must be properly maintained to ensure representative ground water samples. The owner, operator, or permittee must practice proper maintenance procedures, including the following:

- (1) Keep all wells securely capped and locked when not in use. The owner, operator, or permittee shall maintain all the caps and locks.
- (2) Make repairs as necessary to correct any wear, decay, severe corrosion, or physical damages that are observed on or in the well or dedicated equipment and submit to the commissioner documentation that the necessary repairs have been made

to maintain the integrity of the well.

(3) Maintain proper drainage around each well head by the use of a concrete pad around the protective casing of each well.

(4) Control vegetation height around each of the wells as required in 329 IAC 10-20-2(d).

(5) Redevelop a well that has accumulated a silt volume of more than twenty percent (20%) of the screen length. The well must be redeveloped prior to the next sampling event.

(g) If a ground water monitoring well is destroyed or otherwise fails to properly function, the owner, operator, or permittee must comply with the following requirements:

(1) The owner, operator, or permittee shall provide the commissioner with a written report within ten (10) days of discovering that the well is destroyed or not properly functioning. The report must include the following information:

(A) The date of discovery that a well is destroyed or is not properly functioning.

(B) The probable cause of well destruction, damage, or malfunction.

(C) A proposed repair or replacement plan, in accordance with subdivision (2) and with section 4 of this rule, that is subject to the commissioner's approval.

(2) Within thirty (30) days after receiving the commissioner's approval of the plan submitted under subdivision (1)(C), the monitoring well must be repaired or replaced in accordance with the following:

(A) If the well is repaired, the following requirements must be fulfilled:

(i) The owner, operator, or permittee shall submit to the commissioner a description of the repair methods.

(ii) The owner, operator, or permittee shall submit to the commissioner the revised design and construction diagram.

(B) If the ground water monitoring well is replaced, the following requirements must be fulfilled:

(i) The original ground water monitoring well must be properly abandoned in accordance with subsection (i).

(ii) A description of installation methods for the replacement of all pertinent ground water monitoring wells, a well design and construction diagram, and the borehole drilling log must be submitted to the commissioner.

(3) If discovery of a well failure coincides with the time of a scheduled sampling event, the failed monitoring well must be sampled immediately after it has been repaired or replaced.

(h) The owner, operator, or permittee shall abandon and replace a ground water monitoring well if:

(1) the ground water monitoring well has a permeable or semipermeable annular sealant; or

(2) any of the following details of the ground water well construction are not available:

(A) Screened interval.

(B) Annular sealant material.

(C) Borehole and casing diameters.

(D) Casing and screen material.

(E) Ground elevation and the reference mark elevation.

(F) Outside casing diameter and depth.

(G) Filter pack material.

(i) The owner, operator, or permittee shall notify the commissioner in writing and obtain written approval to decommission or abandon any ground water monitoring well. Abandonment procedures must comply with the following:

(1) Abandonment procedures must be:

(A) in compliance with 310 IAC 16-10-2 [310 IAC 16 was repealed filed Nov 22, 1999, 3:34 p.m.: 23 IR 776. See 312 IAC 13.] of the department of natural resources; or

(B) an alternative procedure approved by the commissioner.

(2) Methods of abandonment must ensure that slurry does not bridge or become obstructed and that the borehole is completely sealed.

(3) Attempts must be made to remove the entire casing from the well to be abandoned, if there is evidence that the integrity of the annulus between the borehole and well casing has been compromised.

(4) Accurate records of the location and abandonment procedures must be maintained in the operating records.

(j) All ground water monitoring wells that have been approved by the commissioner must be used to obtain ground water to be analyzed for the purpose of this rule.

(k) The commissioner may require additional ground water monitoring wells during the active life, closure, or post-closure care period of the MSWLF if:

(1) ground water flow data indicate that ground water flow directions are other than anticipated in the ground water monitoring system design;

(2) further evaluation of the hydrogeology of the MSWLF determines that additional wells are needed; or

(3) additional wells are necessary to achieve compliance with ground water monitoring standards under 329 IAC 10-15-5.

(l) The ground water monitoring boundary must be located:

(1) within the property line; and

(2) within fifty (50) feet of the solid waste boundary that has been approved by the commissioner for final closure, except

where fifty (50) feet is not possible because of physical obstacles or geology. If the owner, operator, or permittee chooses to use intrawell comparison procedures to evaluate the ground water data, the monitoring boundary shall be considered to be at the location of each ground water monitoring well designated for the detection monitoring program.

(m) The number of independent ground water samples collected to establish background ground water quality data must be consistent with the appropriate statistical procedures in accordance with section 6 of this rule.

(n) Background ground water quality may be established at ground water monitoring wells that are not located hydraulically upgradient from the MSWLF solid waste boundary if, as determined by the commissioner:

(1) hydrogeologic conditions do not allow the owner, operator, or permittee to determine which wells are hydraulically upgradient; or

(2) sampling at other wells will provide an indication of background water quality that is as representative or more representative than that provided by the upgradient wells.

(o) If contamination is detected in any ground water monitoring well used to establish background ground water quality, the contamination must be investigated, within the MSWLF's facility boundary, to the extent necessary to determine that the MSWLF is not the cause of contamination. If an investigation reveals that the contamination is caused by one (1) or more MSWLF units within the MSWLF, the owner, operator, or permittee must:

(1) further assess and investigate the contamination, as specified under section 10 of this rule; and

(2) use any monitoring well in which the contamination is detected as a downgradient well in all ground water monitoring programs.

(p) Each time ground water samples are collected from ground water monitoring wells at the monitoring boundary, the owner, operator, or permittee shall prepare and submit to the commissioner ground water potentiometric - surface maps, or flow maps, of the aquifer being monitored at the site. Except for subdivisions (5), (11), and (13), which may be presented in tabular form accompanying the maps, each map must indicate the following:

(1) A clear identification of the contour interval for the potentiometric-surface or water table surface of each aquifer being monitored at the MSWLF.

(2) The ground water monitoring wells:

(A) considered to be upgradient;

(B) considered to be downgradient; and

(C) for which there has been no determination due to the hydrogeologic complexities.

(3) Each ground water monitoring well's identification and location.

(4) Each piezometer's identification and location.

(5) The static water elevations at each ground water monitoring well, referenced to mean sea level and measured to the nearest one-hundredth (0.01) foot.

(6) Real property boundaries, facility boundaries, and the solid waste boundaries.

(7) The identification of each aquifer through either its title or its elevation.

(8) The MSWLF's name and county.

(9) The map scale and a north arrow.

(10) Ground water flow arrows.

(11) The date and time of the measurements for each of the wells.

(12) The elevation of the ground surface and the top of the casing at each well and piezometer. The elevation of the referenced mark located on top of the casing of each ground water monitoring well and piezometer must be surveyed to the nearest plus or minus one-hundredth (± 0.01) foot. The referenced mark must be used to measure static water levels.

(13) The following information, upon request by the commissioner:

(A) An updated site surface topography and surface water drainage patterns as described under 329 IAC 10-15-4(b)(12) if the potentiometric surface being evaluated is influenced by surface topography.

(B) All water wells and surface water bodies used as a drinking water source within one-fourth ($\frac{1}{4}$) mile of the solid waste boundary.

(C) Any other information the commissioner determines to be necessary to evaluate the map information.

(q) Ground water must be monitored as required in sections 7, 10, and 13 of this rule. The sampling frequency must be as specified under:

(1) section 7 of this rule for detection monitoring;

(2) section 10 of this rule for assessment monitoring; and

(3) section 13 of this rule for corrective action.

(r) All ground water monitoring wells that are so specified by the commissioner must have ground water samples collected and analyzed for the constituents identified in Table 1A, Table 1B, or Table 2, whichever is applicable. Ground water sampling must be done semiannually or at another frequency specified by the commissioner.

(s) Each time ground water samples are collected from ground water monitoring wells at the monitoring boundary, the following requirements for static water elevations must be:

- (1) Obtained from each ground water monitoring well and each piezometer.
- (2) Measured to the nearest one-hundredth (0.01) foot, and referenced to mean sea level.
- (3) Obtained as close in time as practical from each well or piezometer prior to purging and sampling each well. If such a purging and collection sequence is expected to affect the accuracy of the static water elevation measurements in any well or piezometer in the ground water monitoring system, then water elevation measurements must be obtained prior to purging and sampling any well.

(t) The owner, operator, or permittee shall submit the following information to the commissioner within sixty (60) days of obtaining the ground water samples in a sampling event unless a verification sampling program, as described in section 8 of this rule, is implemented:

- (1) All static water elevations measured to the nearest one-hundredth (0.01) foot.
- (2) Ground water potentiometric-surface maps, or flow maps, as specified in subsection (p).
- (3) Two (2) unbound laboratory certified reports, including one (1) original copy, that include the following information:
 - (A) The detection limit for each chemical constituent.
 - (B) The date samples were collected.
 - (C) The date samples were received by the laboratory.
 - (D) The date samples were analyzed by the laboratory.
 - (E) The date the laboratory report was prepared.
 - (F) The method of analysis used for each constituent.
 - (G) The sample identification number for each sample.
 - (H) The results of all sample analyses.
- (4) Field report sheets as described under section 2(b)(12) of this rule for each ground water monitoring well sampled and the field chain of custody form for each sample as described under section 2(b)(14) of this rule.
- (5) A report correlating sample identification numbers with the corresponding well identification number and blank identification numbers.
- (6) An explanation of how the well sampling sequence as described under section 2(a)(6) of this rule was established for the sampling event.
- (7) The statistical evaluation report as described under section 6(e) of this rule.
- (8) When requested by the commissioner, one (1) copy of the results of the laboratory analyses on computer diskette or by other electronic means must be submitted to the commissioner. The electronic format of the submission will be established by the commissioner.
- (9) When requested by the commissioner, the following information:
 - (A) The results of all laboratory quality control sample analyses, including:
 - (i) blanks;
 - (ii) spikes;
 - (iii) duplicates; and
 - (iv) standards.
 - (B) Raw data.
 - (C) Laboratory bench sheets.
 - (D) Laboratory work sheets.
 - (E) Chromatograms.
 - (F) Instrument printouts.
 - (G) Instrument calibration records.

(u) Detection monitoring must be conducted throughout the active life, closure, and post-closure periods of the MSWLF.
(Solid Waste Management Board; 329 IAC 10-21-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1855; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2791; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3836)

329 IAC 10-21-2 Sampling and analysis plan and program

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. (a) The owner, operator, or permittee shall carry out a ground water sampling and analysis program that is specified in an approved sampling and analysis plan, and that complies with the requirements of this rule. The sampling and analysis plan must address all items included in this section, where applicable, and it must satisfy the following requirements:

- (1) For all new MSWLFs permitted under this article, the sampling and analysis plan must be approved by the commissioner before the first sampling event occurs.
- (2) Existing MSWLFs that have not previously submitted an approved sampling and analysis plan that includes all applicable requirements of this section, must have a plan approved by the commissioner by one (1) of the following times, whichever

occurs first:

- (A) At the time of the next permit renewal application.
 - (B) At closure.
 - (C) At a time determined by the commissioner.
- (3) Existing MSWLFs that have, by the effective date of this article, submitted to the commissioner an approved sampling and analysis plan that does not include all applicable requirements of this rule, must submit a revised plan, if deemed necessary by the commissioner, by one (1) of the following times, whichever occurs first:
- (A) At the time of the next permit renewal application.
 - (B) At closure.
 - (C) At a time determined by the commissioner.
- (4) Changes or additions to a previously approved sampling and analysis plan must be approved by the commissioner before the changes or additions are implemented.
- (5) The approved sampling and analysis plan must be retained at or near the MSWLF in the operating record or at an alternative location approved by the commissioner.
- (6) The sampling and analysis plan must include the following:
- (A) A description of the following:
 - (i) The method that will be used to determine the sequence of sampling of ground water monitoring wells. The sequence determination must:
 - (AA) compare wells that are not contaminated to those that are contaminated or to those that have the potential to be contaminated; and
 - (BB) follow the criteria described under subsection (b)(8).
 - (ii) The method of evacuation, including:
 - (AA) a description of the equipment and procedures to be used;
 - (BB) the method for calculating one (1) well volume at each well; and
 - (CC) the method for measuring the volume of water evacuated.
 - (iii) The equipment and procedures to be used in sample collection during detection, assessment, and corrective action ground water monitoring programs, including, but not limited to:
 - (AA) the sizes, number, and material of containers to be used for collection of samples; and
 - (BB) the manufacturer, make, and model number of field meters for pH, Eh, and specific conductance.
 - (iv) Copies of the owner's manual for each type of meter used in the sampling procedures.
 - (B) The qualifications and minimum training that the owner, operator, or permittee will require of the ground water sampler or sampling crew.
- (b) The sampling and analysis program and procedures must comply with the following:
- (1) The sampling crew shall:
- (A) comply with requirements of state and federal agencies regarding worker safety;
 - (B) wear latex gloves, vinyl gloves, or gloves made out of alternative material that has been approved by the commissioner whenever the samplers' hands are in proximity of:
 - (i) sample water;
 - (ii) open sample containers;
 - (iii) sampling equipment; or
 - (iv) the open well; and
 - (C) avoid contact between gloves and samples.
- (2) Each time ground water samples are collected from ground water monitoring wells at the monitoring boundary, static water elevations must be:
- (A) obtained from each monitoring well and each piezometer;
 - (B) measured to the nearest one-hundredth (0.01) foot, and referenced to mean sea level; and
 - (C) obtained as close in time as practical from each well or piezometer prior to purging and sampling each well.
- If such a purging and collection sequence is expected to affect the accuracy of the static water elevation measurements in any other well or piezometer in the ground water monitoring system, then water elevation measurements must be obtained prior to purging and sampling any well.
- (3) Samples that are to be analyzed for dissolved metals must be field filtered immediately after the sample is obtained from the monitoring well using a forty-five hundredths (0.45) micron high capacity filter. Use of an alternative filter type or filter size must be approved by the commissioner.
- (4) Static water in the monitoring well must be removed with equipment that does not:
- (A) cause the water to cascade over the well screen; or
 - (B) cause strong gradients or excess volatilization of organic compounds in the ground water.
- (5) The method of evacuation must be suited to the recharge of the ground water monitoring well, the well depth, and the well

diameter, and must comply with one (1) of the following:

- (A) Evacuation may be accomplished with a pump. If a pump is used, the following requirements must be satisfied:
 - (i) The intake of the pump must be placed within, and ground water must be withdrawn from, the screened interval of the well.
 - (ii) Purging with a pump must continue until a minimum of three (3) well volumes has been evaluated or the field constituents of pH, specific conductance, and temperature are stabilized within ten percent (10%) of a field determined mean reading for three (3) consecutive field readings to be completed as follows:
 - (AA) A minimum of six (6) samples must be taken for the required parameters.
 - (BB) Three (3) consecutive samples must be used to arrive at the field determined mean reading, and each of the next three (3) samples must be within ten percent (10%) of the field determined mean.
 - (CC) In the event that one (1) or more of the last three (3) samples are not within ten percent (10%) of the mean, the first sample will be deleted and a new field mean will be calculated from the next three (3) consecutive samples.
 - (DD) Additional samples are taken and the process described under subitem (CC) is continued until three (3) consecutive samples agree within ten percent (10%) of the field mean determined by the three (3) previous consecutive samples.
 - (EE) Purging a well by more than five (5) well volumes is prohibited.
 - (iii) When removing water from the well for obtaining a sample, the pump must not be raised or lowered unless the potentiometric surface is as low as or lower than the top of the well screen.
 - (iv) A well purged by a pump must be sampled by the same pump unless otherwise approved by the commissioner.
 - (v) If the permittee chooses to use a rotary pump, it must be used in accordance with the following:
 - (AA) The flow must be maintained at a slow and steady rate.
 - (BB) If the flow of water is intermixed with air during the use of the rotary pump, the pump must be lowered deeper into the water column or the sample collection must be accomplished with a bottom discharging bailer.
 - (CC) The interior of the pump must be coated with Teflon® or an inert material equivalent to Teflon® or be composed of stainless steel.
 - (vi) If the permittee chooses to use a positive gas displacement pump, it must be used in accordance with the following:
 - (AA) The flow must not be at a rate that forcefully ejects water or gas at the end of the expulsion cycle.
 - (BB) The generator must be placed downwind at least ten (10) feet from the well being monitored.
 - (vii) If the permittee chooses to use a peristaltic pump, it must be used in accordance with the following:
 - (AA) The peristaltic pump must only be used in a well with a depth of thirty-three (33) feet or less.
 - (BB) Historical data and tubing manufacturer data sheets must be utilized to select the proper tubing for each site.
 - (CC) Water in the tubes must be evacuated between wells.
 - (DD) The tubes must be decontaminated between wells.
- (B) Evacuation may be accomplished with a bailer. If a bailer is used, the following requirements must be satisfied:
 - (i) The well must be purged a minimum of three (3) well volumes if the ground water recharge rate is greater than the ground water withdrawal rate.
 - (ii) The well may be purged dry if the ground water recharge rate is less than the ground water withdrawal rate.
 - (iii) Purging a well more than five (5) well volumes is prohibited.
 - (iv) The bailer must be made of Teflon®, PVC, stainless steel, or other material approved by the commissioner.
 - (v) To assure that volatile organics are not stripped from the water, the bailer must be lowered in a slow and steady manner until the top of the ground water is contacted.
 - (vi) The bailer must be lowered into the water column until the bailer is full or the base of the well is contacted by the bottom of the bailer.
 - (vii) Once full of water, the bailer must be lowered no further into the water column.
 - (viii) The bailer cord must not touch or contact the water column.
 - (ix) To assure that volatile organics are not stripped from the water, the bailer must be withdrawn at a slow steady rate up the well casing.
 - (x) When the bailer reaches the top of the well riser, the bailer must be removed carefully to prevent aeration or agitation.
 - (xi) The bailer cord must be pulled away from the water when pouring from a top discharging bailer.
- (C) The MSWLF's sampling and analysis plan must designate methods for disposal of purged water and decontamination solutions.

- (D) The commissioner shall consider a well to be dry under the following circumstances:
 - (i) The well is not mechanically damaged, yet it is unable to deliver water when opened for sampling.
 - (ii) The well does not have a recovery rate adequate to supply ground water for sampling within a twenty-four (24) hour period after the well is purged.
- (E) A well that is dry on a consistent basis may be deemed by the commissioner to be an improperly functioning well. The owner, operator, or permittee may be required to replace or relocate any improperly functioning well.
- (6) Upon request, the commissioner may approve use of equipment or methods not specified in subdivision (5). The alternative equipment must provide equivalent evacuation efficiency and the request must include:
 - (A) an exact description of the purging or sampling apparatus;
 - (B) operational specifics of the apparatus; and
 - (C) an explanation of why the proposed sampling equipment is equivalent or superior to the equipment specified under subdivision (5) for:
 - (i) accuracy of readings;
 - (ii) minimization of cross contamination;
 - (iii) suitability of the equipment to the site; and
 - (iv) ease of decontamination, when applicable.
- (7) Ground water monitoring sample collection for detection monitoring, verification resampling, assessment, and corrective action ground water monitoring programs must satisfy the following requirements:
 - (A) Each sample must be numbered and labeled as a separate sample.
 - (B) One (1) or more independent samples must be collected from every ground water monitoring well on-site or as otherwise specified by the commissioner.
 - (C) At least one (1) field duplicate sample must be collected as follows:
 - (i) A field duplicate sample is defined as an additional sample collected from a ground water monitoring well, where:
 - (AA) the additional sample is analyzed independently of the first sample obtained from that well; and
 - (BB) the ground water quality results for the additional sample are not used in the statistical evaluation, unless approved by the commissioner.
 - (ii) The field duplicate sample must be treated in the same manner as the independent sample.
 - (iii) A field duplicate sample must be collected from one (1) well for every ten (10) wells, or part thereof, sampled.
 - (iv) The field duplicate sample must not be identified as such to the laboratory performing the sample analysis.
 - (D) The first sample collected from a given well must be listed on the field record as the independent sample. The additional sample from the given well must be listed on the field record as the field duplicate sample.
 - (E) The independent sample and the field duplicate sample must be collected consecutively. The equipment for obtaining the samples does not require decontamination between sample collection; however, the independent sample and the field duplicate sample must be analyzed independently of each other.
 - (F) At least one (1) trip blank sample must be taken and must meet the following requirements:
 - (i) Be containerized prior to entering the MSWLF.
 - (ii) Consist of water that is:
 - (AA) distilled;
 - (BB) deionized; or
 - (CC) laboratory grade water.
 - (iii) Be analyzed for all constituents required for the sampling event unless a justification for limiting the trip blank to specific constituents is submitted to and approved by the commissioner.
 - (iv) Accompany the independent samples at all times.
 - (G) At least one (1) equipment blank sample must be collected from each piece of nondedicated equipment used to collect samples at the site, in accordance with the following:
 - (i) The water used for the equipment blank sample collection must be either distilled water or deionized water.
 - (ii) The equipment to be sampled must include:
 - (AA) all nondedicated pumps and bailers;
 - (BB) intermediate containers;
 - (CC) probes used for measuring static water levels, if the probe is inserted into the well after the well is purged; and
 - (DD) reusable sections of the field filtration equipment.
 - (iii) The equipment blank must be analyzed for all constituents required by the sampling event unless a justification for limiting the equipment blank to specific constituents is submitted to and approved by the commissioner.

- (iv) The equipment blank must be obtained after the last monitoring well has been sampled.
- (H) At the end of each sampling day, the sampler may collect at least one (1) field blank sample. If a field blank sample is collected, the following criteria must be met:
 - (i) The water used for the sample must be distilled water or deionized water brought onto the site and poured into the designated sample bottles within fifty (50) feet from any ground water monitoring well sampled the day the field blank is collected.
 - (ii) Field blank samples must be analyzed for all constituents required for the sampling event unless a justification for limiting the field blank to specific constituents is submitted to and approved by the commissioner.
- (8) Ground water samples must be collected in a sequence that satisfies the following:
 - (A) Wells must be sampled in a sequence that minimizes the potential for cross contamination of samples. Historical ground water quality data must be used in estimating a well's potential for contamination. Samples must be collected in order of increasing likelihood of contamination in the well supplying the sample as follows:
 - (i) All upgradient ground water monitoring wells must be sampled before downgradient wells.
 - (ii) If downgradient wells have not been verified to be contaminated, samples must be collected first from those downgradient wells that are furthest from disposed solid waste, followed by wells that are increasingly close to disposed solid waste.
 - (iii) Downgradient wells that have been verified as contaminated must be sampled in sequence, starting with those downgradient wells that have the lowest level of contaminants, followed by wells that have increasingly higher levels of contaminants.
 - (B) Samples must be collected in a sequence that minimizes volatilization of compounds. Samples must be collected in order of decreasing volatility as follows:
 - (i) For the constituents listed in section 15(a) of this rule (Table 1A) and section 15(b) of this rule (Table 1B):
 - (AA) volatile organic compounds;
 - (BB) field pH;
 - (CC) field specific conductance;
 - (DD) dissolved metals; and
 - (EE) all other constituents.
 - (ii) For the constituents listed in section 16 of this rule (Table 2):
 - (AA) volatile organic compounds;
 - (BB) field pH;
 - (CC) field specific conductance;
 - (DD) semivolatile organics;
 - (EE) dissolved metals;
 - (FF) total metals; and
 - (GG) all other constituents.
 - (C) A sample collection sequence for the constituents listed in section 15(a) of this rule (Table 1A), section 15(b) of this rule (Table 1B), and section 16 of this rule (Table 2) must be developed for use in the event that a ground water monitoring well cannot supply sufficient water volume to collect a full sample. To establish the sample collection sequence, the owner, operator, or permittee shall consider:
 - (i) well logs; and
 - (ii) previous sample data.
- (9) All nondedicated equipment must be decontaminated in accordance with the following requirements:
 - (A) Decontamination procedures must be implemented after sample collection at each well and before reuse of the equipment. Time of decontamination must be indicated on the field report sheet. The commissioner may approve alternate decontamination procedures that provide equally reliable prevention of cross contamination.
 - (B) If a rotary pump is used, then the following decontamination procedures must be implemented:
 - (i) The interior, exterior, and tubing must be decontaminated.
 - (ii) The exterior of the rotary pump must be washed with a nonphosphate detergent and potable water bath. The exterior of the rotary pump must be rinsed in potable water and double rinsed in deionized or distilled water.
 - (iii) The pump must have a volume of a nonphosphate detergent water mixture pumped through the system equal to one-third ($\frac{1}{3}$) of the previous well's purge volume or two (2) gallons, whichever is less, to remove all pumped water from the internal parts. This solution must be pumped through the pump head and then continued through the tubing until ejected from the system.
 - (iv) A gross rinse of potable water must follow the detergent mixture specified in item (iii). The rinse water volume must match the volume specified in item (iii).
 - (v) If samples are acquired from the pump, a minimum of three (3) gallons of distilled or deionized water rinse must be pumped through the system prior to sampling the next well.

- (vi) The commissioner may approve an alternative decontamination procedure provided the alternative procedure yields equally reliable prevention of cross contamination.
- (C) If a peristaltic pump is used, then the following decontamination procedures must be implemented:
 - (i) The tubing must be decontaminated.
 - (ii) After each water sample passes through the pump, a volume of distilled or deionized water and nonphosphate detergent solution equal to the sample volume must be immediately passed through the pump.
 - (iii) The detergent solution must be followed by a potable water rinse. The volume of the rinse must be three (3) times the detergent solution volume.
- (D) If a bailer is used, then the following decontamination procedures must be implemented:
 - (i) Proper equipment must be utilized to decontaminate the internal, external, and valve components of the bailer.
 - (ii) Nondedicated bailers must be decontaminated on-site prior to obtaining samples from the next well. Decontamination must consist of, in the following order:
 - (AA) Washing the interior and exterior surfaces of the bailer with a nonphosphate detergent solution.
 - (BB) Rinsing with potable water.
 - (CC) Final double rinsing with distilled or deionized water.
 - (iii) Dedicated bailers that are either stored at a site away from the sampling point, or stored in the well riser and above the maximum ground water level must be double rinsed with distilled or deionized water prior to use. Bailers must not be stored below the ground water level in the well.
 - (iv) Teflon® coated wire and any water level probe must be:
 - (AA) submerged in a nonphosphate detergent bath;
 - (BB) abraded by a clean cloth as the wire is removed from the wash bath;
 - (CC) deposited into a gross rinse bath of potable water; and
 - (DD) lifted as a coil and placed in a final distilled or deionized water rinse.
 - (v) A rope attached to the bailer or lead wire must not be reused.
- (E) Meters that measure for specific conductance, temperature, Eh, and pH must be washed with a nonphosphate detergent solution and rinsed with a volume of deionized water equal to a minimum of four (4) times the volume used by the meter for effective readings, unless nonphosphate detergent will inhibit the meter's ability to function properly.
- (10) Monitoring well samples must be collected in containers that are specified in either the MSWLF's sampling and analysis plan or the quality assurance project plan described in subdivision (13). The commissioner may establish guidance regarding the following:
 - (A) Recommended preservatives.
 - (B) Bottle material composition.
 - (C) Minimum sample volumes.
 - (D) Refrigeration after sample collection.
 - (E) The prevention of exposure to direct radiation.
- (11) Field meters for pH, Eh, and specific conductance must be as follows:
 - (A) have accuracy of readings that do not vary more from a standard value than the following:
 - (i) Three percent (3%) of the reading for a suitable standard for specific conductance.
 - (ii) Twenty-five (25) millivolts of the indicator solution for Eh.
 - (iii) One-tenth (0.1) standard unit of the calibration standard value for pH.
 - (B) be calibrated at the beginning and end of each day of a sampling event, or more frequently if recommended by a manufacturer's specifications, in accordance with the following:
 - (i) The calibration solutions of high, low, and midrange values must be retained on-site during the sampling event for potential use at every sampling point.
 - (ii) Calibrations must be conducted as specified by the manufacturer of the equipment.
- (12) The sampler shall submit to the commissioner a field report for every sampling event. The report must include the following information pertaining to each ground water monitoring well:
 - (A) The time and date each well was purged and sampled.
 - (B) The location of each well that was sampled, including indicating the well as upgradient or downgradient of the solid waste boundary.
 - (C) The condition of well heads and well security devices.
 - (D) The weather conditions during sample collection.
 - (E) The condition of purged water with regard to odor and turbidity, and the condition of the collected sample.
 - (F) The in situ temperature, in degrees Celsius, of the ground water as measured in line or immediately after removal of water from the well.
 - (G) The static water elevations referenced to mean sea level and measured to the nearest one-hundredth (0.01) foot.
 - (H) The type of equipment used for purging and for collection of samples and, where applicable, the cord's chemical

composition.

(I) A copy of the chain of custody for the sample.

(J) The location and elevation of the referenced measuring mark on the well casing used to measure the static water elevations.

(K) The time equipment was decontaminated at each well location.

(L) The reaction of the ground water to the preserving agent when the sample is containerized.

(M) Additional information as required by the commissioner.

(13) The owner, operator, or permittee of an MSWLF shall develop a quality assurance project plan and submit the following items to the commissioner for approval:

(A) Documentation to verify that all laboratories performing ground water sample analysis intend to comply with the minimum standards set forth in the facility's quality assurance project plan.

(B) One (1) scientifically valid and accurate testing method approved by the commissioner for each constituent required for analysis under this rule.

(14) Each owner, operator, or permittee of an MSWLF shall develop and utilize a chain of custody protocol to account for the possession and security of any sample from the time the sample is taken until the analytical results are received by the commissioner. The chain of custody protocol must conform with the following:

(A) The field chain of custody form must account for the sample from the time the sample is removed from the well until the time the sample is delivered to the laboratory and the sample custodian of the analytical laboratory signs the field chain of custody form.

(B) The laboratory chain of custody form must account for the location and security of the sample from the sample's arrival at the analytical laboratory until the analysis of the sample is found to be acceptable under the quality assurance plan.

(C) Field and laboratory chain of custody forms must identify each sample with its unique identifying number and include the following information:

(i) The number and types of containers holding the sample.

(ii) The names of all persons having contact with the sample, including those persons collecting or transporting the sample.

(iii) The time and dates of any transfers in possession of a sample.

(iv) The condition of the sample at the time of its arrival at the laboratory, including the condition of the sample's seal and the temperature inside each cooler holding a sample.

(D) In addition to the information required under clause (C), the field chain of custody form must include a task sheet that delineates the analysis to be performed on the sample or samples.

(E) The laboratory must maintain the laboratory chain of custody form and, upon request, release the laboratory chain of custody form to the commissioner. The field chain of custody form must be submitted to the commissioner in accordance with section 1(t) of this rule.

(c) Upon request, the commissioner may approve the use of methods, procedures, or equipment not specified in subsection

(b). The alternative methods, procedures, or equipment must provide results or measurements that are equivalent in accuracy and reliability and the request must include the following:

(1) an exact description of the alternative methods, procedures, or equipment; and

(2) an explanation of why the proposed methods, procedures, or equipment are equivalent or superior to those specified under subsection (b).

(Solid Waste Management Board; 329 IAC 10-21-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1858; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2794; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3839)

329 IAC 10-21-3 Duration of monitoring program

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Once established at an MSWLF, ground water monitoring must be conducted throughout the active life, closure, and post-closure care periods of the MSWLF.

(b) Ground water monitoring may be extended beyond the post-closure care period if an assessment ground water monitoring program or a corrective action program is being conducted at an MSWLF and the commissioner determines that an MSWLF unit within the MSWLF is adversely affecting ground water or poses a threat to human health or the environment. *(Solid Waste Management Board; 329 IAC 10-21-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1863; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3845)*

329 IAC 10-21-4 Ground water monitoring well construction and design

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 4. (a) Ground water monitoring wells installed after the effective date of this article must comply with the requirements of this section.

(b) The following drilling techniques must be used to ensure proper ground water monitoring well construction:

- (1) The method of drilling a borehole for a monitoring well or for exploration must be selected to ensure the following:
 - (A) Subsurface materials are not adversely affected.
 - (B) Ground water or aquifers are not contaminated or cross-contaminated.
 - (C) Quality continuous unconsolidated and consolidated material samples are collected.
 - (D) Equipment sensitivity allows adequate determination of an appropriate screen location.
 - (E) The diameter of the borehole is at least four (4) inches larger than the diameter of the well casing and screen, to allow tremie placement of the filter pack and annular sealants.
 - (F) Drill fluids other than water, fluid additives, or lubricants are to be avoided. However, if they are unavoidable, those used must be demonstrated to be inert and an impact statement must be made regarding the potential impact of any liquids introduced into the borehole concerning the physical and chemical characteristics of the subsurface and ground water.
- (2) All equipment that will encounter formation materials must be decontaminated prior to drilling each new borehole.
- (c) Casing and screen materials must comply with the following:
 - (1) Casing and screen materials must be chosen to:
 - (A) be resistant to corrosion and degradation in any natural or contaminated environment;
 - (B) be resistant to physical damage as a result of installation, usage, and time; and
 - (C) have minimal effect on ground water chemistry with respect to the analytes of concern.
 - (2) The casing sections must be physically joined and made watertight by:
 - (A) heat welding;
 - (B) threading; or
 - (C) force fitting.
 - (3) The use of solvents, glues, or other adhesives to join casing sections is prohibited.
 - (4) The casing must be two (2) inches in diameter or greater.
 - (5) Except for open borehole bedrock wells, screens are required for all ground water monitoring wells and must include the following:
 - (A) The screens must be continuous slot wire or machine slotted.
 - (B) Slot size must retain ninety percent (90%) to one hundred percent (100%) of the filter pack material.
 - (C) Screen lengths must be not less than two (2) feet and not greater than ten (10) feet unless approved by the commissioner.
 - (6) Well casing and screens must be cleaned prior to introduction into the borehole to prevent manufacturers' residues and coatings from contaminating the borehole or aquifer.
 - (7) Screen and casing must be properly centered in the borehole prior to filling the annulus.
- (d) Procedures for collecting, analyzing, and storing core samples must comply with the following:
 - (1) Continuous downhole samples of the unconsolidated and consolidated materials must be collected in all ground water monitoring well boreholes. For monitoring well clusters, continuous samples must be collected from the surface to the base of the deepest well; other wells within the cluster must be sampled at all significant stratigraphic changes and at the screened interval. Samples must not be combined into composite samples for classification or testing.
 - (2) All procedures regarding testing and sampling must be described to the commissioner in writing.
 - (3) The owner, operator, or permittee shall:
 - (A) retain all borehole samples in labeled containers or labeled core boxes that are securely stored and accessible for a period of:
 - (i) seven (7) years after the samples are collected; or
 - (ii) seven (7) years after permit issuance;whichever occurs later;
 - (B) notify the commissioner, in writing, of the location of the core sample storage; and
 - (C) ensure that core samples are available for inspection, by the commissioner or by a representative of the department, at all reasonable times or during normal operating hours.
 - (4) Each significant stratum encountered in the borehole must have the following analysis performed and testing results must be identified with respect to sample elevations and borehole:
 - (A) Complete grain size using the following techniques:

- (i) Sieve.
- (ii) Hydrometer.
- (B) Cation exchange capacity.
- (C) Hydraulic conductivity if the information for that strata is not available to the satisfaction of the commissioner.
- (D) Atterberg limits.
- (e) The ground water monitoring well annulus must be filled as follows when drilling is complete:
 - (1) The annular space from six (6) inches below the well screen to two (2) feet above the well screen must be filled with a filter pack consisting of inert sand or gravel and shall comply with the following:
 - (A) A uniform grain size must be chosen to reflect three (3) to five (5) times the average fifty percent (50%) retained size of the formation material unless this filter pack grain size would impede adequate flow of ground water into the well. Should this happen, a filter pack grain size shall be used that allows ground water flow into the well and prevents as much silt infiltration as possible.
 - (B) Natural material may be an acceptable constituent of the filter pack if slump is unavoidable.
 - (C) The filter pack in a bedrock well is optional. However, if used, the filter pack must be of a nonreactive coarse sand or gravel.
 - (D) The upper one (1) to two (2) feet of the filter pack must be of fine, inert sand to prevent infiltration of seal materials.
 - (E) The filter pack must be emplaced without bridging, preferably by tremie pipe, or other methods as approved by the commissioner.
 - (2) A bentonite seal of at least three (3) feet must be emplaced by tremie pipe in the annular space directly above the filter pack.
 - (3) The annular space from the bentonite seal to one (1) foot below the frost line must be tremied with a grout of bentonite, cement/bentonite, or other shrinkage-compensated, low permeability fill and shall include the following:
 - (A) All bentonite and cements must be mixed to the manufacturer's specifications.
 - (B) Full hydration, curing, or setting of the bentonite seal must occur prior to further backfilling as required by this subdivision.
 - (4) A surface seal of neat cement or concrete must be installed in the remaining borehole annular space above the intermediate fill, including the following:
 - (A) The apron of the surface seal must be designed to prevent ponding and infiltration by extending at least two and five-tenths (2.5) feet from the well casing.
 - (B) The apron must slope at least fifteen (15) degrees outward.
 - (C) A locking protective metal casing must be installed around the well casing and be anchored below the frost line in the surface seal.
 - (D) A vent hole or vented cap must be placed at the top of the well casing to allow accurate piezometric variation and to prevent gas build-up.
 - (E) The annular space between the well casing and the protective metal casing must be neat cement filled to a level at least one (1) inch higher than that of the surrounding apron.
 - (F) A drainage hole must be drilled in the protective metal casing immediately above the cement fill specified in clause (E).
 - (G) The remaining annular space between the well casing and the protective metal casing must be filled with a fine gravel.
 - (H) A weather resistant lock must be dedicated to the unit and must be serviced twice a year and when the well is sampled.
 - (I) A permanent unique identification must be affixed to each ground water monitoring well and the identification must be visible.
 - (J) Three (3) foot bumper guards or other suitable protection may be required by the commissioner to prevent vehicular traffic from damaging the protective metal casing.
- (f) The permittee shall provide ten (10) days' advance notification of the date and time of the installation of the monitoring wells.
 - (g) Development of ground water monitoring wells must occur as soon as possible after the seal and grout have set and must conform with the following:
 - (1) All monitoring wells must be developed in such a way as to:
 - (A) allow free entry of formation water;
 - (B) minimize turbidity of the sample; and
 - (C) minimize clogging of the wells.
 - (2) Development methods chosen must be appropriate for the stratigraphic conditions.
 - (3) An in situ hydraulic conductivity test must be performed after the well has been properly developed.

(h) Diagrammatical borehole drilling logs for all ground water monitoring wells must be of similar scale and include the following information:

- (1) The monitoring well and borehole identification.
- (2) The date of drilling.
- (3) The method of drilling.
- (4) The borehole diameter.
- (5) The method of obtaining consolidated material and unconsolidated material.
- (6) The type of any drill fluids, fluid additives, or lubricants other than water that have been used.
- (7) Penetration measurements, such as hammer blow counts, penetrometer measurements, or other acceptable penetration measurements.
- (8) The sample recovery measured to the nearest one-tenth (0.1) foot.
- (9) Consolidated material and unconsolidated material field descriptions, including the following information:
 - (A) Lithology and sedimentology.
 - (B) Mineralogy.
 - (C) Degree of cementation.
 - (D) Degree of moisture.
 - (E) Color as referenced from soil color charts such as the Munsell soil charts.
 - (F) Grain size and textural classification of unconsolidated samples as referenced from the United States Department of Agriculture textural classification charts. Grain-size divisions shall be based on a modified form of the Wentworth grain-size scale defined under 329 IAC 10-2-206.3. A determination shall be made of the percentage and grades of coarse fragments greater than two (2) millimeters in size based on 329 IAC 10-2-206.3 in addition to the USDA textural classification. Consolidated samples must be described using accepted geological classification systems and nomenclature. A clear description of the classification system used must be included with the logs.
 - (G) Any other physical characteristics of the consolidated material and unconsolidated material such as scent, staining, fracturing, and solution features.
 - (H) The percent recovery and rock quality designation.
 - (I) Other primary or secondary features.
 - (J) Drilling observations and appropriate details required for unconsolidated drilling logs.
 - (K) A clear photograph of all consolidated cores, labelled with:
 - (i) the date the photograph was taken;
 - (ii) the sample interval;
 - (iii) the reference scale;
 - (iv) the reference color scale; and
 - (v) the identification of the borehole.

(L) Interval of continuous samples and unconsolidated material test data.

- (10) Distance to and depth of any water bearing zones, measured to the nearest one-hundredth (0.01) foot.
- (11) Static water elevations measured to the nearest one-hundredth (0.01) foot and indicating the dates and times the measurements were taken.
- (12) The elevation of permanent wells at the ground surface to the nearest one-tenth (0.1) foot, with the referenced measuring mark measured to the nearest one-hundredth (0.01) foot relative to the National Geodetic Vertical Datum.
- (13) The horizontal location of permanent wells measured to the nearest thirty (30) cm using Universal Transverse Mercator (UTM) coordinates.
- (14) Total borehole depth and elevation measured to the nearest one-hundredth (0.01) foot.
- (15) Elevation range of screened interval measured to the nearest one-hundredth (0.01) foot.

(i) Diagrammatical construction and design logs of all pertinent ground water monitoring wells must include the following information:

- (1) The monitoring well identification and UTM coordinates as described under subsection (h)(13).
- (2) The composition of well and protective casing materials.
- (3) The type of joints and couplings between well casing segments.
- (4) The elevations of the ground water surface to the nearest one-tenth (0.1) foot and of the referenced measuring mark at the top of the well casing measured to the nearest one-hundredth (0.01) foot relative to the National Geodetic Vertical Datum.
- (5) The diameter of well casing and borehole.
- (6) The elevation of the bottom of the borehole and the depth of the borehole measured to the nearest one-hundredth (0.01) foot.
- (7) The screen slot size.
- (8) The elevation range of the screened interval measured to the nearest one-hundredth (0.01) foot.
- (9) The screen length measured to the nearest one-hundredth (0.01) foot.

- (10) Methods of installation of the annular fill.
- (11) The elevation range and the depth of the filter pack measured to the nearest one-hundredth (0.01) foot.
- (12) The length of the filter pack.
- (13) The grain size and composition of all filter pack materials and the fifty percent (50%) retained size of the formation material used to determine filter pack materials.
- (14) The elevation and depth range of the bentonite seal above the filter pack measured to the nearest one-hundredth (0.01) foot.
- (15) The thickness of the bentonite seal above the filter pack.
- (16) The composition of annular fill.
- (17) The elevation range, depth range, and thickness of annular fill measured to the nearest one-hundredth (0.01) foot.
- (18) The composition and design of the surface seal.
- (19) The design and composition of materials used for the protection of the well casing.

(Solid Waste Management Board; 329 IAC 10-21-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1864; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2799; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3845)

329 IAC 10-21-5 Preoperational requirements pertaining to the ground water monitoring program

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 5. A newly constructed MSWLF unit of an MSWLF permitted under this article must not accept solid waste until it has complied with all applicable preoperational requirements, including those pertaining to ground water monitoring specified in 329 IAC 10-19-1(a)(2) through 329 IAC 10-19-1(a)(3). *(Solid Waste Management Board; 329 IAC 10-21-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1866; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3848)*

329 IAC 10-21-6 Statistical evaluation requirements and procedures

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 6. (a) The owner, operator, or permittee shall determine if there is a statistically significant increase for each constituent analyzed, except for constituents listed in section 15(b) of this rule (Table 1B). This statistical evaluation is required each time ground water is collected and analyzed at the monitoring boundary for all MSWLFs.

(b) To determine a statistically significant increase compared to the background ground water quality, each constituent from each ground water monitoring well sample must be compared to the background ground water quality of that constituent, according to the statistical procedures and performance standards specified in this section.

(c) The owner, operator, or permittee shall submit to the commissioner for approval a written statistical evaluation plan for each ground water monitoring program required under this rule. Submittal of the plan must comply with the following:

- (1) For all new MSWLFs and lateral expansions to be permitted under this article, the plan must be submitted before the first sampling event occurs following permit issuance or as otherwise specified by the commissioner.
 - (2) For existing MSWLFs, the plan must be submitted with the next renewal application, at the time of closure, or as specified by the commissioner, whichever occurs first, unless a statistical evaluation plan that includes all applicable requirements under this section has been previously submitted.
 - (3) The plan must explain which of the various statistical methods, described in subsection (f), may be needed to address a continuously expanding ground water data base. All statistical methods must meet the performance standards outlined in subsection (g).
 - (4) The plan must identify the statistical procedures to be used whenever verification resampling, as specified under section 8 of this rule, is implemented.
 - (5) The plan must identify any computer data management or statistical evaluation program used by the owner, operator, or permittee and, upon request by the commissioner, include appropriate documentation of the computer program.
- (d) Changes to the statistical evaluation plan must not be implemented without approval from the commissioner.

(e) The owner, operator, or permittee shall submit a statistical evaluation report of the ground water sample analysis to the commissioner. The report must be submitted within sixty (60) days after obtaining ground water samples from the ground water monitoring wells, unless a verification resampling program described under section 8 of this rule, is implemented. The statistical evaluation report must include the following:

- (1) All input data, output data, and equations used for all calculations and statistical tests utilized.
- (2) A detailed discussion of the conclusions from the statistical evaluation. This discussion must include the identification of all constituents found to have a statistically significant increase.
- (3) A graphical representation of the MSWLF's ground water data when requested by the commissioner. The commissioner

shall provide guidance in preparing graphics.

(f) Any of the following statistical procedures may be chosen for the statistical evaluation, provided the chosen statistical procedure is capable of meeting the performance standards in subsection (g):

(1) A parametric analysis of variance (ANOVA) followed by multiple comparison procedures to identify a statistically significant increase. The method must include estimation and testing of the contrasts between each downgradient ground water monitoring well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each downgradient ground water monitoring well's median and the background ground water quality median levels for each constituent.

(3) A tolerance or prediction interval in which an interval for each constituent is established from the distribution of the background ground water quality data, and the level of each constituent in each downgradient ground water monitoring well for the most recent sampling event is compared to the upper tolerance limit or upper prediction limit.

(4) A control chart, which establishes control limits for each constituent.

(5) A temporal or spatial trend analysis.

(6) Another valid statistical test method that meets the performance standards of subsection (g).

(g) The statistical procedures and methods used must comply with the following performance standards:

(1) The statistical procedure used to evaluate ground water monitoring data must be appropriate for the data distribution of each constituent. If the data distribution of a constituent is shown to be inappropriate for a normal theory test, then either the data must be transformed or a distribution-free statistical test must be used. If data distributions for the constituents differ, more than one (1) statistical method may be needed.

(2) If ground water data from an individual monitoring well is compared either to background ground water quality, which may include pooled upgradient ground water monitoring well data from more than one (1) well, or to a ground water protection standard, then the test must be done at a Type I error level that is no less than one-hundredth (0.01) for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period must be no less than five-hundredths (0.05); however, the Type I error rate of no less than one-hundredth (0.01) for individual well comparisons must be maintained. This performance standard does not apply to:

- (A) tolerance intervals;
- (B) prediction intervals; and
- (C) control charts.

(3) The validity of the statistical test used must be evaluated prior to applying the method to the ground water data. This evaluation must address:

- (A) the error potential for false positives and false negatives; and
- (B) any other evaluation deemed necessary by the commissioner.

(4) If a control chart is used to evaluate ground water monitoring data, the specific type of control chart and associated statistical parameter values must be protective of human health and the environment. These values must be determined after considering:

- (A) the number of background samples;
- (B) the background data distribution; and
- (C) the range of background concentrations for each constituent analyzed.

(5) If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be protective of human health and the environment. These statistical parameters must be determined after considering:

- (A) the number of background samples;
- (B) the background data distribution; and
- (C) the range of background concentrations for each constituent analyzed.

(6) The statistical method must account for data below the limit of detection with one (1) or more statistical procedures. Any practical quantitation limit that is used in a statistical procedure must:

- (A) be the lowest concentration limit that can be repeatedly and reliably achieved; and
- (B) be within specified limits of precision and accuracy during routine laboratory operating conditions.

(7) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability.

(Solid Waste Management Board; 329 IAC 10-21-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1866; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2802; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3848)

329 IAC 10-21-7 Detection ground water monitoring program

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) A detection ground water monitoring program that satisfies the following requirements is required for all MSWLFs: (1) Within the six (6) months following the scheduled date of compliance that is specified in section 1(a) of this rule, a minimum of four (4) independent background samples from each approved ground water monitoring well must be collected and analyzed for the constituents listed in section 15(a) of this rule (Table 1A). If a background data base, comprising data from every monitoring well approved by the commissioner and every constituent listed in section 15(a) of this rule (Table 1A), has been previously established, then additional independent samples are not required for the purpose of establishing background.

(2) Any well installed after the scheduled date of compliance specified in section 1(a) of this rule and designated for detection monitoring must have minimum number of independent samples collected and analyzed for the constituents listed in section 15(a) of this rule (Table 1A). The minimum number of independent samples must satisfy the chosen statistical procedures and performance standards under section 6 of this rule.

(3) Subsequent sampling events during the active life, closure, and post-closure periods of the MSWLF must include the collection and analysis of at least one (1) independent sample from each approved monitoring well. These samples must be analyzed for all constituents in section 15 of this rule (Table 1A and Table 1B). The detection monitoring frequency must be at least semiannual during the active life, closure, and post-closure periods.

(4) The commissioner may specify an alternative frequency for detection monitoring that must comply with the following:

(A) The alternative frequency must be no less than annual.

(B) The alternative frequency must be based on consideration of the following factors:

(i) Sedimentology of the aquifer and unsaturated zone.

(ii) Hydraulic conductivity of the aquifer and unsaturated zone.

(iii) Ground water flow rates.

(iv) Minimum distance between the upgradient permitted solid waste boundary and the downgradient ground water monitoring well screen.

(v) Resource value of the aquifer.

(vi) The fate and mode of transport of any constituents detected in response to detection monitoring.

(vii) Constituent concentrations recorded at the date of alternative frequency selection.

(5) The owner, operator, or permittee must determine, based on the results of sample collection and analysis performed in accordance with this subsection, whether any statistically significant increase in concentration has occurred for any constituent listed in section 15(a) of this rule (Table 1A). In order to make this determination, the owner, operator, or permittee must compare the samples to:

(A) background ground water quality;

(B) a ground water protection standard that has been established from a previous assessment ground water monitoring program conducted under section 10 of this rule; or

(C) a ground water protection standard that was established under 329 IAC 2-16-10, which was repealed in 1996.

(b) If a statistically significant increase in a constituent concentration has been determined, through ground water detection monitoring performed in accordance with subsection (a), the owner, operator, or permittee must accomplish the following:

(1) Notify the commissioner within fourteen (14) days of the determination. The notification must include the following:

(A) Those constituents listed in section 15(a) of this rule (Table 1A) for which a statistically significant increase in concentration has been observed and the last recorded concentration for each of those constituents.

(B) The identification of each ground water monitoring well where a statistically significant increase was observed.

(C) Whether verification procedures and sampling as described under section 8 of this rule will be pursued.

(2) Establish, within ninety (90) days of determination of a statistically significant increase, an assessment ground water monitoring program that meets the requirements of section 10 of this rule unless the owner, operator, or permittee chooses:

(A) to institute a verification program, pursuant to section 8 of this rule; or

(B) to demonstrate, pursuant to section 9 of this rule.

(c) A corrective action program may be required during a detection monitoring program if a verified statistically significant increase is attributable to the MSWLF and is an increase over either of the following:

(1) A ground water protection standard that has been established from a previous assessment ground water monitoring program conducted under section 10 of this rule.

(2) A ground water protection standard that was established under 329 IAC 2-16-10, which was repealed in 1996, for any constituent listed in section 15(a) of this rule (Table 1A).

(d) If, pursuant to subsection (c), the commissioner determines that a corrective action program is necessary, the owner, operator, or permittee must notify all pertinent local government officials of this determination.

(e) If the field pH for any ground water sample obtained at the monitoring boundary is determined to be above ten (10) or below five (5) standard pH units, the owner, operator, or permittee shall:

(1) within fourteen (14) days of the determination, notify the commissioner, in writing, of the identity of the well or wells whose samples indicated an anomalous pH level, and of the corresponding pH values of those samples; and

(2) within sixty (60) days of the determination, submit a written report explaining the anomalous pH values to the commissioner. After reviewing the report, the commissioner may determine that an assessment ground water monitoring program, described under section 10 of this rule, is necessary.

(Solid Waste Management Board; 329 IAC 10-21-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1868; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2046; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2803; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3849)

329 IAC 10-21-8 Verification of a statistically significant increase in constituent concentration

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 8. (a) The owner, operator, or permittee shall develop a verification resampling and analysis plan that will provide verification that a statistically significant increase has occurred in the concentration of one or more constituents during detection or assessment monitoring programs. This plan must:

(1) use the statistical procedures and performance standards described in section 6 of this rule to determine:

(A) the number of resamples that must be collected for verification of a statistically significant increase in constituent concentration; and

(B) the number of resamples that must fail in order to verify the statistically significant increase;

(2) identify the MSWLF-wide false positive rate and the per-comparison false positive rate;

(3) demonstrate that there is an acceptable balance between the false positive rate and the false negative rate;

(4) be approved by the commissioner prior to implementation; and

(5) after approval by the commissioner, be incorporated into the statistical evaluation plan.

(b) Until the owner, operator, or permittee obtains approval for a proposed verification resampling and analysis plan, a minimum of two (2) independent samples must be collected when verification of a statistically significant increase is attempted.

(c) Until the owner, operator, or permittee obtains approval for a verification resampling plan, the commissioner shall consider an observed statistically significant increase to be verified if:

(1) any of the verification resamples confirm a statistically significant increase over background ground water quality; or

(2) the owner, operator, or permittee chooses not to institute a verification resampling program.

(d) Within fourteen (14) days following the verification resampling determination, the owner, operator, or permittee shall notify the commissioner, in verbal or written format, of the following:

(1) The results of the verification resampling and analysis program.

(2) An intention, on the part of the owner, operator, or permittee to submit a demonstration pursuant to section 9 of this rule.

(e) The detection ground water monitoring program or the assessment ground water monitoring program shall continue throughout the verification resampling program. Progression to an assessment or corrective action ground water monitoring program shall be based on the verification resampling results, regardless of subsequent detection monitoring results if the verification resampling program extends into the next scheduled sampling event.

(f) Following the completion of a verification resampling program, a report must be submitted to the commissioner no later than sixty (60) days following the last verification resampling event or thirty (30) days prior to the next scheduled semiannual sampling event, whichever occurs first. This report must be written and include the following:

(1) All information required under section 1(t) of this rule.

(2) The date the commissioner was notified as required in subsection (d).

(3) Whether the ground water monitoring program will:

(A) remain in detection monitoring or assessment monitoring;

(B) initiate an assessment monitoring program; or

(C) initiate a corrective action program.

(4) Whether the owner, operator, or permittee intends to make a demonstration pursuant to section 9 of this rule.

(5) Results of the verification resampling, including information required by section 1(t)(3) through 1(t)(5) of this rule.

(g) If the verification sampling program determines that a statistically significant increase did occur, the owner, operator, or permittee:

(1) must initiate an assessment ground water monitoring program that meets the requirements of section 10 of this rule or a corrective action program that meets the requirements of section 13 of this rule, whichever program is applicable; or

(2) may choose to make a demonstration pursuant to section 9 of this rule, while maintaining a detection monitoring program.

(h) The commissioner may approve an extension of the submittal deadlines required by subsection (f) if the owner, operator, or permittee:

(1) requests an extension; and

(2) provides an explanation for the need of an extension.

(Solid Waste Management Board; 329 IAC 10-21-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1869; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2805; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3850)

329 IAC 10-21-9 Demonstration that a statistically significant increase or contamination is not attributable to a municipal solid waste land disposal facility unit

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 9. (a) If a statistically significant increase in a constituent concentration has been determined, the owner, operator, or permittee may demonstrate that the statistically significant increase was caused by:

- (1) a source other than the MSWLF unit;
- (2) an error in sampling technique, laboratory analysis, or statistical evaluation; or
- (3) natural variation in ground water quality.

(b) If the owner, operator, or permittee intends to make a demonstration under this section, the owner, operator, or permittee shall submit, within fourteen (14) days of verifying a statistically significant increase, a plan that describes:

- (1) the general approach that will demonstrate that the MSWLF unit did not cause the verified statistical increase; and
- (2) a schedule to complete the demonstration. Based on previous ground water data and the thoroughness of the plan submitted under subdivision (1), the commissioner may modify the proposed schedule.

(c) If a demonstration is approved by the commissioner, the owner, operator, or permittee may continue detection ground water monitoring or assessment ground water monitoring, whichever is applicable.

(d) If the owner, operator, or permittee is unable to submit a successful demonstration within the time frame specified in subsection (b)(2), the owner, operator, or permittee shall initiate either an assessment ground water monitoring program or a corrective action program, whichever program is applicable.

(e) If a successful demonstration is not submitted within the time frame identified in subsection (b)(2), the owner, operator, or permittee may extend the demonstration process while implementing an assessment ground water monitoring program or a corrective action program, whichever is applicable. If, subsequently, the extended demonstration process proves successful, the MSWLF unit may return to detection monitoring or assessment monitoring, pursuant to section 7 of this rule, provided there have been no other verified statistically significant increases.

(f) The detection monitoring program or the assessment monitoring program, whichever is applicable, must be continued throughout the demonstration period identified in subsection (b)(2).

(g) The commissioner shall consider that a statistically significant increase is attributable to the MSWLF unit if the owner, operator, or permittee chooses not to demonstrate pursuant to this section. (*Solid Waste Management Board; 329 IAC 10-21-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1870; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2805; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3851*)

329 IAC 10-21-10 Assessment ground water monitoring program

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 10. (a) Establishment of an assessment ground water monitoring program is required upon any of the following circumstances:

(1) When the owner, operator, or permittee has verified that a statistically significant increase over background levels has occurred for any constituent listed in section 15(a) of this rule (Table 1A) at any ground water monitoring well at the monitoring boundary of the MSWLF unit, and a demonstration pursuant to section 9 of this rule has not been approved by the commissioner.

(2) When the owner, operator, or permittee is engaged in a corrective action program specified under section 13 of this rule.

(3) When the owner, operator or permittee of an existing MSWLF is conducting, as of the effective date of this article, a Phase II ground water monitoring program as specified under 329 IAC 2-16, which was repealed in 1996.

(b) The owner, operator, or permittee shall conduct an assessment ground water monitoring program in accordance with the following requirements:

(1) Within ninety (90) days after determining that the owner, operator, or permittee of an MSWLF must conduct assessment ground water monitoring, all wells containing constituents with statistically significant elevated concentrations, and all their adjacent wells, must be sampled and analyzed for all constituents listed in section 16 of this rule (Table 2). If deemed necessary, the commissioner may require samples to be collected and analyzed from additional wells.

(2) Within fourteen (14) days after receiving certified laboratory results from the final sampling conducted under subdivision (1), the owner, operator, or permittee shall submit to the commissioner written notification of the following information for any constituent listed in section 16 of this rule (Table 2) that is detected:

(A) The identity and recorded concentration of the constituent.

(B) The identity of each ground water monitoring well where the constituent was detected.

(3) A copy of the notification required under subdivision (2) and a copy of the certified laboratory results must be placed in the operating record within thirty (30) days of receiving the original certified laboratory results.

(4) The owner, operator, or permittee shall collect and analyze a minimum of four (4) independent samples from each ground water monitoring well identified in subdivision (2) in order to establish background ground water quality. Certified laboratory analyses of the independent ground water samples must be submitted to the commissioner no later than thirty (30) days prior to the next scheduled semiannual sampling event.

(5) The owner, operator, or permittee shall establish a ground water protection standard as described in section 11 of this rule for any constituent that has been detected in ground water samples collected under subdivision (1).

(6) The owner, operator, or permittee shall, during subsequent sampling events, collect at least one (1) independent sample from each well designated to be in an assessment monitoring program as identified in subdivision (2)(B). Each independent sample must be analyzed for all constituents detected and identified in subdivision (2)(A).

(c) For sampling events during assessment ground water monitoring, the commissioner may do the following:

(1) Specify an appropriate subset of ground water monitoring wells to sample and analyze for constituents in section 16 of this rule (Table 2).

(2) Specify a constituent or constituents from section 16 of this rule (Table 2) that may be deleted from the constituent monitoring list upon demonstration by the owner, operator, or permittee that the constituent to be deleted is:

(A) not reasonably expected to be in the solid waste;

(B) not derived from the solid waste;

(C) naturally occurring in the soil that underlies the site and would be soluble in ground water at the detected levels, even in the absence of the MSWLF unit; or

(D) not a constituent of concern based on historical ground water quality.

(3) Specify a constituent or constituents that may be added to the constituent monitoring list, based on historical, ground water quality or wastes placed in the MSWLF unit.

(4) Specify an alternate frequency for repeated sampling and analysis of the ground water for the full set of constituents in section 16 of this rule (Table 2). The sampling frequency for constituents in section 15 (Table 1A and Table 1B) may be altered, provided it is at least an annual frequency. The alternate frequency must continue throughout the active life, closure, and post-closure care periods of the MSWLF. The alternate frequency must be based on consideration of the following factors:

(A) Sedimentology of the aquifer and unsaturated zone.

(B) Hydraulic conductivity of the aquifer and unsaturated zone.

(C) Ground water flow rates.

(D) Minimum distance between upgradient solid waste boundary of the MSWLF unit and downgradient monitoring well screen.

(E) Resource value of the aquifer.

(F) The fate of any constituents detected.

(G) The mode of transport of any detected constituents.

(H) Ground water quality data.

(I) Other information as required by the commissioner for the demonstration.

(d) After establishing background ground water quality described in subsection (b)(4), subsequent semiannual sampling events must include the following:

(1) At least one (1) independent sample from all the ground water monitoring wells that are included in both detection and assessment ground water monitoring programs and any other wells specified by the commissioner.

(2) Analysis for all constituents included in both detection and assessment ground water monitoring programs.

(3) Submittal of the information required in section 1(t) of this rule.

(e) Starting from the date that an assessment ground water monitoring program is required, ground water samples must be collected and analyzed for all constituents in section 16 of this rule (Table 2) on an annual basis, or at an alternate frequency specified by the commissioner. Samples for assessment monitoring must be collected from each well identified in subsection (b)(2)(B). For these sampling events, the owner, operator, or permittee shall:

(1) for this sampling event, submit written notification as described in subsection (b)(2);

(2) establish background ground water quality as described in subsection (b)(4) for any constituent that has been detected in ground water samples collected during this sampling event;

(3) establish a ground water protection standard as described in section 11 of this rule for any constituent that has been detected in ground water samples collected during the sampling event;

(4) for subsequent sampling events following the sampling event required under this section, include sampling for all constituents listed in subdivision (1); and

(5) include the sampling event in the assessment monitoring sample event schedule.

(f) During assessment ground water monitoring, the owner, operator, or permittee shall proceed according to the following:

(1) If the concentration of any constituent listed in section 16 of this rule (Table 2) is determined to be less than or equal to background ground water quality, for two (2) consecutive semiannual sampling events, then the owner, operator, or permittee may request from the commissioner permission to return to detection monitoring.

(2) If the concentration of any constituent listed in section 16 of this rule (Table 2) is determined to be a statistically significant increase over background ground water quality, but below the ground water protection standard established in section 11 of this rule, then assessment ground water monitoring must continue in accordance with this section.

(3) If a statistically significant increase above the ground water protection standard is determined for any constituent listed in section 16 of this rule (Table 2), the owner, operator, or permittee shall perform the following:

(A) Notify the commissioner within fourteen (14) days of this determination. The notification to the commissioner must include the following information:

- (i) A list of all constituents in section 16 of this rule (Table 2) that have a statistically significant increase above the ground water protection standard established under section 11 of this rule.
- (ii) The identification of each ground water monitoring well from which samples indicated a statistically significant increase.
- (iii) Whether or not the owner, operator, or permittee intends to institute verification procedures and resampling as described under section 8 of this rule.

(B) In the event that a corrective action program is to be implemented, notify all pertinent local officials, including the county commissioner, and officials of the solid waste management district and the county health department.

(C) Within ninety (90) days of a determination under this subdivision, submit to the commissioner an initial proposal for a corrective action program that is designed to meet the requirements of section 13(b) of this rule unless the owner, operator, or permittee chooses to:

- (i) institute a verification resampling program described in section 8 of this rule; or
- (ii) submit a demonstration pursuant to section 9 of this rule.

(D) Remain in an assessment ground water monitoring program, which the commissioner may modify.

(g) During assessment ground water monitoring, whenever the concentration of a secondary constituent identified in section 11(c) of this rule is found to exceed levels that are twice the ground water protection standard, as established in section 11 of this rule, the owner, operator, or permittee shall perform the following:

(1) Notify the commissioner within fourteen (14) days of the finding. This notification must include the following information:

- (A) The identity and most recent concentration of any secondary constituent found to have the excessive levels.
- (B) The identification of each ground water monitoring well found to have excessive levels of a secondary constituent.
- (C) Whether verification resampling, as described under section 8 of this rule, will be initiated.

(2) Submit, if so directed by the commissioner, a proposal for a corrective action program. The proposal must be submitted within ninety (90) days after receiving notification from the commissioner that the proposal is required and must be in accordance with the requirements of section 13(b) of this rule, provided the owner, operator, or permittee:

- (A) does not institute a verification resampling program pursuant to section 8 of this rule; and
- (B) does not choose to submit a demonstration pursuant to section 9 of this rule.

(3) Remain in an assessment ground water monitoring program, which the commissioner may modify.

(Solid Waste Management Board; 329 IAC 10-21-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1870; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2806; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3852; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27)

329 IAC 10-21-11 Ground water protection standards

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 11. (a) For each constituent listed in section 16 of this rule (Table 2) and for every secondary constituent, as identified in subsection (c), the ground water protection standard shall be considered to be:

- (1) the maximum contaminant level (MCL) for that constituent, if a maximum contaminant level has been established;
- (2) the secondary maximum contaminant level for that constituent, if a secondary maximum contaminant level has been established; or
- (3) the background ground water quality established for that constituent, based on background ground water monitoring data approved by the commissioner, if:
 - (A) a maximum contaminant level or a secondary maximum contaminant level has not been established; or
 - (B) for a given constituent, the background ground water quality is higher than the maximum contaminant level identified in subdivision (1), the secondary maximum contaminant level identified in subdivision (2), or the health-based levels identified in subsection (b).

(b) The commissioner may establish an alternative ground water protection standard for constituents for which an MCL has not been established in accordance with the following:

(1) The alternative ground water protection standards must be appropriate public health and environmental protection based concentrations that satisfy the following criteria:

(A) The ground water protection standard is derived in a manner consistent with the federal Environmental Protection Agency guidelines for assessing risks of environmental pollutants in accordance with 51 FR 33992, 51 FR 34006, 51 FR 34014, and 51 FR 34028, September 24, 1986.

(B) The ground water protection standard is based on scientifically valid studies, conducted in accordance with the Toxic Substances Control Act (TSCA) Good Laboratory Practice Standards as defined in 40 CFR 792, August 17, 1989.

(C) For carcinogens, the ground water protection standard represents a concentration associated with an excess lifetime cancer risk level within the 1×10^{-5} to 1×10^{-6} range.

(D) For systemic toxicants, the ground water protection standards represent a concentration to which the human population could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime.

(2) The commissioner may consider the following in establishing ground water protection standards:

(A) Multiple contaminants in the ground water.

(B) Exposure threats to sensitive environmental receptors.

(C) Other site-specific exposure or potential exposure to ground water.

(c) For the purposes of this rule, secondary constituents are identified as the following:

(1) Ammonia.

(2) Chloride.

(3) Iron.

(4) Manganese.

(5) Sodium.

(6) Sulfate.

(Solid Waste Management Board; 329 IAC 10-21-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1873; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3854)

329 IAC 10-21-12 Public notice for corrective action

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. (a) This section applies to owners, operators and permittees of MSWLFs.

(b) Any owner, operator, or permittee required to conduct an assessment of corrective measures, as described under section

13(d) of this rule, shall conduct a public meeting as follows:

(1) The meeting must be held within sixty (60) days after the owner, operator, or permittee has completed an approved assessment of corrective measures.

(2) The meeting must be held in the county where the MSWLF requiring the assessment of corrective measures is located.

(3) The meeting must be open to all persons.

(4) At least ten (10) days prior to the meeting, the owner, operator, or permittee shall publish notice of the public meeting in a newspaper of general circulation in the county where the public meeting will be held.

(5) The meeting must be transcribed by a court reporter.

(6) At the public meeting, the owner, operator, or permittee shall:

(A) present a brief description of the location and operation of the MSWLF;

(B) review the assessment of potential corrective measures, including:

(i) an analysis of the effectiveness of potential corrective measures in meeting all remedy requirements and objectives, as described under section 13(e) of this rule;

(ii) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(iii) the time required to begin and complete the remedy; and

(iv) the costs of remedy implementation;

(C) offer the opportunity for public comments and questions; and

(D) attempt to answer the public's questions.

(7) The owner, operator, or permittee shall submit to the department within thirty (30) days after the date of the meeting:

(A) a complete transcript of the public meeting; and

(B) a copy of the newspaper notice announcing the public meeting.

(c) The owner, operator, or permittee shall pay the costs of complying with this section. *(Solid Waste Management Board; 329 IAC 10-21-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1873; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3855)*

329 IAC 10-21-13 Corrective action program

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 13. (a) The owner, operator, or permittee must submit a proposal for a plume and site characterization plan, as described in subsection (b), and initiate an assessment of various corrective measures, as described in subsection (d), within ninety (90) days of determining any of the following:

(1) A statistically significant increase above any ground water protection standard, as identified in section 11(a) or 11(b) of this rule, has occurred during an assessment ground water monitoring program for any constituent that is listed in section 16 of this rule (Table 2).

(2) At the request of the commissioner, and during assessment monitoring, a secondary constituent listed under section 11(c) of this rule has exceeded levels that are twice the ground water protection standard for that constituent.

(3) At the request of the commissioner, and during detection monitoring, a constituent listed in section 15(a) of this rule (Table 1A) has shown a concentration that is a statistically significant increase over a ground water protection standard established during a previous assessment monitoring program. Previous monitoring programs include those programs conducted under section 10 of this rule, or Phase II programs conducted under 329 IAC 2-16, which was repealed in 1996.

(b) The proposal for a plume and site characterization plan must include the following:

(1) Characterization of the chemical and physical nature of the contaminants, including vertical and horizontal extent of the release by:

(A) proposing location and installation procedures for additional assessment ground water monitoring wells, as necessary; and

(B) identification of all constituents to be analyzed during subsequent ground water sampling events.

(2) Characterization of the contaminated aquifer, limited to the area of the contamination plume. Aquifer characterization may include all of the items described in this subsection.

(3) Proposed location and installation procedures of at least one (1) additional ground water monitoring well at the facility boundary in the direction of contaminant migration.

(4) The process by which all persons who own or reside on land that directly overlies any part of the contaminated ground water plume will be notified.

(5) The process for sampling and analyzing ground water at any private or public intake, as specified by the commissioner, unless permission to sample cannot be obtained from the owner of the intake.

(6) The process by which drinking water will be supplied to all public and private ground water intakes affected by the contamination.

(7) Procedures that will be implemented to stop further migration of contaminants.

(c) Implementation of the plume and site characterization plan must include the following:

(1) Within thirty (30) days of receiving written approval of the initial corrective action proposal, the owner, operator, or permittee shall implement subsection (b)(1) through (b)(7).

(2) The owner, operator, or permittee shall submit a corrective action progress report, including any sampling and analysis results, on a semiannual basis, until the contamination has been determined to be cleaned up as defined in subsection (j).

(3) The ground water monitoring well identified in subsection (b)(3) must be sampled in accordance with section 10(b) and 10(d) of this rule.

(4) If any additional constituent is detected in the monitoring well identified in subsection (b)(3) and that constituent exceeds its ground water protection standard at a statistically significant concentration, then the owner, operator, or permittee shall include that constituent in the sampling of the ground water monitoring wells identified in subsection (b)(1).

(5) The owner, operator, or permittee shall gather sufficient information from the plume and site characterization plan to be presented at the public meeting required in section 12 of this rule and incorporated in the final decision on a corrective action remedy as described in subsection (e).

(d) The assessment of various corrective measures must be initiated within ninety (90) days of determining that a corrective action program is necessary. The owner, operator, or permittee shall complete the assessment of various corrective measures in a reasonable time, with the approval of the commissioner, and in accordance with the following:

(1) The assessment of various corrective measures must include an analysis of the effectiveness of potential corrective measures in meeting all of the remedy requirements and objectives as described in subsection (e).

(2) The analysis must include the following:

(A) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies. This shall include safety impacts, cross-media impacts, and control of exposure to any residual contamination.

(B) The time required to begin and complete the remedy.

(C) Implementation costs of the proposed remedy.

(D) The institutional requirements, such as state or local permit requirements, or other environmental or public health

requirements that may substantially affect remedy implementation.

(E) A discussion by the owner, operator, or permittee of the corrective measures assessment, prior to the selection of a remedy, in a public meeting as required in section 12 of this rule.

(3) The owner, operator, or permittee shall continue to monitor in accordance with the assessment ground water monitoring program as required in section 10 of this rule.

(e) The selection of the corrective action remedy must be based on the assessment of various corrective measures conducted under subsection (d), including the following:

(1) The owner, operator, or permittee shall:

(A) select a remedy that, at a minimum, meets the standards listed in subdivision (2); and

(B) submit to the commissioner, within sixty (60) days after the public meeting required in section 12 of this rule, a report describing the selected remedy and how the remedy meets the standards of subdivision (2).

(2) The owner, operator, or permittee shall select a remedy that:

(A) will be protective of human health and the environment;

(B) will attain the ground water protection standard as required in section 11 of this rule;

(C) will reduce or eliminate, to the maximum extent practicable, further releases of those constituents in sections 15 and 16 of this rule (Table 1A, Table 1B, and Table 2), and in section 11(c) of this rule that may pose a threat to human health or the environment;

(D) will comply with standards for waste management as required in subsection (i); and

(E) is chosen after considering input from the public hearing required under section 12 of this rule.

(3) In selecting a remedy that meets the standards of subdivision (2), a report must be submitted that includes the following factors:

(A) The long and short term effectiveness and protection that is offered by the potential remedy, along with an assessment of the remedy's probable outcome, based on the following considerations:

(i) The magnitude of reduction in the existing risks.

(ii) The magnitude of residual risks in terms of likelihood of further releases, due to waste remaining after implementing a remedy.

(iii) The type and degree of long term management required, including monitoring, operation, and maintenance.

(iv) The short term risks that might be posed to the community, workers, or the environment during the implementation of such a remedy. Short term risk assessment shall include potential threats to human health and the environment associated with excavation, transportation, redisposal, or containment of waste or contaminated materials.

(v) The estimated time until corrective measures are completed.

(vi) The potential for exposure of humans and environmental receptors to remaining waste, including the potential threat associated with excavation, transportation, redisposal, or containment of waste or contaminated materials.

(vii) The long term reliability of the engineering and institutional controls.

(viii) The potential need for additional or alternative remedies.

(B) The effectiveness of the remedy in controlling the source and in reducing further releases based on the following considerations:

(i) The extent to which containment practices will reduce further releases.

(ii) The extent to which treatment technologies may be used to reduce further releases.

(C) The ease or difficulty of implementing a potential remedy based on the following considerations:

(i) The technical difficulty of constructing the proposed remedy.

(ii) The expected operational reliability of the proposed remedial technologies.

(iii) The need to coordinate with and obtain necessary approvals and permits from other local or state agencies.

(iv) The availability of necessary equipment and specialists.

(v) The available capacity and location of needed treatment, storage, and disposal facilities.

(D) The capability of the owner, operator, or permittee to manage the technical and economic aspects of the corrective measures.

(E) The degree to which community concerns are addressed by a potential remedy.

(4) The selected remedy report, as described in subdivision (1)(B), must include a schedule for initiating and completing remedial activities. This schedule must be based on the following considerations:

(A) Vertical and horizontal extent, and physical or chemical characteristics of contamination.

(B) Direction of contaminant movement.

(C) Capacity of remedial technologies to achieve compliance with ground water protection standards, as established under section 11 of this rule, and any other remedial objectives.

(D) Availability of treatment or disposal capacity for waste volumes managed during implementation of remedial

measures.

(E) Practical considerations of proposing to use currently unavailable technology that may offer significant advantages over readily available technology, in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives.

(F) Potential risks to human health and the environment from exposure to contamination prior to completing remedial measures.

(G) Resource value of the zone of saturation or aquifer, including the following:

(i) Current and future uses.

(ii) Proximity and withdrawal rate of users.

(iii) Ground water quantity and quality.

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

(v) The hydrogeologic characteristics of the MSWLF and surrounding land.

(vi) Ground water removal and treatment costs.

(vii) The cost and availability of alternative water supplies.

(H) Practical capability of the owner, operator, or permittee to achieve the remedy.

(I) Other relevant factors that may be determined by the commissioner.

(5) Selection of a remedy and implementation schedule must be submitted to the commissioner for review and approval.

(6) The commissioner may determine that remediation of a released constituent, listed in either section 16 of this rule (Table 2) or in section 11(c) of this rule, is not necessary if either of the following are demonstrated to the satisfaction of the commissioner:

(A) Remediation is technically impracticable.

(B) Remediation would result in unacceptable cross-media impacts.

(7) If the commissioner determines that an aquifer cannot be remediated, the owner, operator, or permittee shall contain the aquifer to prevent the migration of contaminants.

(8) A determination made by the commissioner under subdivision (6) will not affect the authority of the state to require source control measures or other necessary measures to:

(A) eliminate or minimize further releases to the ground water;

(B) prevent exposure to the ground water; or

(C) remediate ground water quality to technically achievable concentrations and significantly reduce threats to human health or the environment.

(f) Based on the schedule established under subsection (e)(4) and approved by the commissioner under subsection (e)(5), the owner, operator, or permittee shall do the following:

(1) Establish and implement a corrective action ground water monitoring program that:

(A) at a minimum, meets the requirements of an assessment monitoring program under section 10 of this rule;

(B) indicates the effectiveness of the corrective action remedy; and

(C) demonstrates compliance with the ground water protection standard under subsection (j).

(2) Implement the corrective action remedy selected under subsection (e).

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures must, to the greatest extent practicable, be consistent with remedial objectives and, if possible, contribute to the performance of remedial measures. The following factors must be considered in determining whether interim measures are necessary:

(A) Time required to develop and implement a final remedy.

(B) Actual and potential exposure of nearby populations or environmental receptors to regulated constituents.

(C) Actual and potential contamination of potentially useable water supplies or sensitive ecosystems.

(D) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously.

(E) Weather conditions that may cause regulated constituents to migrate or be released.

(F) Potential for:

(i) fire or explosion; or

(ii) exposure to regulated constituents as a result of an accident, a container failure, or a handling system failure.

(G) Other situations that may pose threats to human health and the environment.

(4) Submit a report to the commissioner detailing the progress and performance of the selected remedy. The report must be submitted on a semiannual basis or as determined by the commissioner.

(g) An owner, operator, or permittee or the commissioner may determine, based on information developed after implementation of the remedy has begun or on other information, that compliance under subsection (e)(2) is not being achieved through the remedy selected. In such cases, after approval by the commissioner, the owner, operator, or permittee shall implement other methods or techniques that could practicably achieve compliance with the requirements unless the owner, operator, or permittee makes a determination under subsection (h).

(h) If the owner, operator, or permittee determines that compliance with requirements under subsection (e)(2) cannot be

technically achieved with any currently available methods, the owner, operator, or permittee shall:

- (1) apply for a commissioner's certification that compliance with requirements under subsection (e)(2) cannot be achieved with any currently available methods;
- (2) implement alternate measures to contain contamination, as necessary, to protect human health, the environment and water resources;
- (3) implement alternate measures that are technically practicable and consistent with the overall remedial objective to:
 - (A) control contamination sources; and
 - (B) remove or decontaminate equipment, units, devices, or structure; and
- (4) within fourteen (14) days of determining that compliance cannot be achieved under subsection (g), submit a report to the commissioner that justifies the alternative measures. The report must be approved by the commissioner prior to implementation of any alternative measures.
- (i) During a corrective action program, all solid waste managed under a remedy that is required under subsection (e), or under an interim measure that is required under subsection (f)(3), must be managed in a manner that:
 - (1) is protective of human health and the environment; and
 - (2) complies with the applicable requirements of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984.
- (j) Remedies selected under subsection (e) are considered complete when the owner, operator, or permittee has demonstrated to the satisfaction of the commissioner the following:
 - (1) Ground water protection standards have been met at all points within the plume of contamination.
 - (2) For a period of three (3) consecutive years, using statistical procedures and performance standards outlined in section 6 of this rule, the following ground water protection standard, whichever is applicable, has not been exceeded:
 - (A) The ground water protection standards for the constituents listed in section 16 of this rule (Table 2).
 - (B) Levels that are twice the concentration of any secondary constituent identified in section 11(c) of this rule.
 - (3) All corrective actions required to complete the remedy have been satisfied.
- (k) The commissioner may, after considering the factors indicated in subsection (l), specify an alternate period during which the following demonstration, whichever is applicable, must be made:
 - (1) The concentrations of the constituents listed in section 16 of this rule (Table 2) have not exceeded ground water protection standards.
 - (2) The concentrations of constituents listed in section 11(c) of this rule have not exceeded levels that are twice the ground water protection standard.
- (l) The following factors will be considered by the commissioner in specifying an alternative time period:
 - (1) Vertical and horizontal extent and concentration of the release.
 - (2) Physical and chemical characteristics of the regulated constituents within the ground water.
 - (3) Accuracy of the ground water monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy.
 - (4) Physical and chemical characteristics of the affected ground water.
 - (5) Physical and chemical characteristics of the affected or potentially affected aquifer system.
- (m) Within fourteen (14) days after the completion of all remedial measures, a certification report, signed by the owner, operator, or permittee and a qualified ground water scientist, shall be submitted to the commissioner for written approval. The report must certify that the remedy has been completed in compliance with the requirements of subsection (j).
- (n) Upon receipt of the commissioner's written approval of the certification report specified in subsection (m), the owner, operator, or permittee shall be released from the requirements for financial assurance for corrective action specified in 329 IAC 10-39-10.
- (o) Corrective action programs that have been initiated under 329 IAC 1.5, which was repealed in 1989, or under 329 IAC 2, which was repealed in 1996, must continue as approved by the commissioner, and the commissioner may incorporate requirements under this rule. *(Solid Waste Management Board; 329 IAC 10-21-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1874; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2808; errata filed Jun 10, 1998, 9:23 a.m.: 21 IR 3939; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3855; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27)*

329 IAC 10-21-14 Ground water corrective action contingency fund (Voided)

Sec. 14. *(Voided by P.L.45-1997, SECTION 24, effective July 13, 1996.)*

329 IAC 10-21-15 Constituents for detection monitoring

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

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Sec. 15. (a) The following constituents shall be measured during detection monitoring and be subject to statistical evaluation procedures under section 6 of this rule:

TABLE 1A
Constituents for Detection Monitoring Subject to
Statistical Evaluation Procedures

Common Name ¹	CAS RN ²
(1) Ammonia (as N)	71-43-2
(2) Benzene	71-43-2
(3) Cadmium	(Dissolved)
(4) Carbon tetrachloride	56-23-5
(5) Chloride	108-90-7
(6) Chlorobenzene	108-90-7
(7) Chloroethane; Ethyl chloride	75-00-3
(8) Chloroform; Trichloromethane	67-66-3
(9) Chromium	(Dissolved)
(10) Copper	(Dissolved)
(11) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(12) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(13) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(14) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(15) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(16) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(17) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(18) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(19) cis-1,3-Dichloropropene	10061-01-5
(20) trans-1,3-Dichloropropene	10061-02-6
(21) Ethylbenzene	100-41-4
(22) Methyl bromide; Bromomethane	74-83-9
(23) Methyl chloride; Chloromethane	74-87-3
(24) Methylene chloride; Dichloromethane	75-09-2
(25) Styrene	100-42-5
(26) Sodium	(Dissolved)
(27) Sulfate	630-20-6
(28) 1,1,1,2-Tetrachloroethane	630-20-6
(29) 1,1,2,2-Tetrachloroethane	79-34-5
(30) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(31) Toluene	108-88-3
(32) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(33) 1,1,2-Trichloroethane	79-00-5
(34) Trichloroethylene; Trichloroethene	79-01-6
(35) Trichlorofluoromethane; CFC-11	75-69-4
(36) Vinyl chloride; Chloroethene	75-01-4
(37) Xylene (Total)	See note 3
(38) Zinc	(Dissolved)

(b) The following constituents shall be measured during detection monitoring but are exempt from statistical evaluation procedures under section 6 of this rule:

TABLE 1B
Constituents for Detection Monitoring Not Subject to
Statistical Evaluation Procedures

(1) Field pH
(2) Field specific conductance
(3) Field Eh (Oxidation-Reduction Potential)
(4) Field dissolved oxygen
(5) Total solids
(6) Total dissolved solids
(7) Alkalinity
(8) Bicarbonate

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(9) Calcium	(Dissolved)
(10) Carbonate	
(11) Iron	(Dissolved)
(12) Magnesium	(Dissolved)
(13) Manganese	(Dissolved)
(14) Potassium	(Dissolved)

Notes:

¹Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

²Chemical Abstracts Service registry number. Where “(Dissolved)” is entered, all species in a filtered sample of the ground water that contain this element are included.

³Xylene (total). This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1130-20-7).

(Solid Waste Management Board; 329 IAC 10-21-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1879; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2812)

329 IAC 10-21-16 Constituents for assessment monitoring

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. The following constituents shall be subject to assessment monitoring procedures under section 10 of this rule:

TABLE 2
Constituents for Assessment Monitoring

Common Name ¹	CAS RN ²
Acenaphthylene	208-96-8
Acenaphthene	83-32-9
Acetone	67-64-1
Acetonitrile; Methyl cyanide	75-05-8
Acetophenone	98-86-2
2-Acetylaminofluorene; 2-AAF	53-96-3
Acrolein	107-02-8
Acrylonitrile	107-13-1
Aldrin	309-00-2
Allyl chloride	107-05-1
4-Aminobiphenyl	92-67-1
Anthracene	120-12-7
Antimony	(Total)
Antimony	(Dissolved)
Arsenic	(Total)
Arsenic	(Dissolved)
Barium	(Total)
Barium	(Dissolved)
Benzene	71-43-2
Benzo[a]anthracene; Benzanthracene	56-55-3
Benzo[b]fluoranthene	205-99-2
Benzo[k]fluoranthene	207-08-9
Benzo[ghi]perylene	191-24-2
Benzo[a]pyrene	50-32-8
Benzyl alcohol	100-51-6
Beryllium	(Total)
Beryllium	(Dissolved)
alpha-BHC	319-84-6
beta-BHC	319-85-7
delta-BHC	319-86-8
gamma-BHC; Lindane	58-89-9
Bis(2-chloroethoxy) methane	111-91-1
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4

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Bis(2-chloro-1-methylethyl) ether; 2,2-Dichlorodiisopropyl ether; DCIP (See note 3)	108-60-1
Bis(2-ethylhexyl) phthalate	117-81-7
Bromochloromethane; Chlorobromomethane	74-97-5
Bromodichloromethane; Dichlorobromomethane	75-27-4
Bromoform; Tribromomethane	75-25-2
4-Bromophenyl phenyl ether	101-55-3
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7
Cadmium	(Total)
Cadmium	(Dissolved)
Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chlordane	See note 4
p-Chloroaniline	106-47-8
Chlorobenzene	108-90-7
Chlorobenzilate	510-15-6
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7
Chloroethane; Ethyl chloride	75-00-3
Chloroform; Trichloromethane	67-66-3
2-Chloronaphthalene	91-58-7
2-Chlorophenol	95-57-8
4-Chlorophenyl phenyl ether	7005-72-3
Chloroprene	126-99-8
Chromium	(Total)
Chromium	(Dissolved)
Chrysene	218-01-9
Cobalt	(Total)
Cobalt	(Dissolved)
Copper	(Total)
Copper	(Dissolved)
m-Cresol; 3-Methylphenol	108-39-4
o-Cresol; 2-Methylphenol	95-48-7
p-Cresol; 4-Methylphenol	106-44-5
Cyanide	57-12-5
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7
4,4'-DDD	72-54-8
4,4'-DDE	72-55-9
4,4'-DDT	50-29-3
Diallate	2303-16-4
Dibenz[a,h]anthracene	53-70-3
Dibenzofuran	132-64-9
Dibromochloromethane; Chlorodibromomethane	124-48-1
1,2-Dibromo-3-chloropropane; DBCP	96-12-8
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
Di-n-butyl phthalate	84-74-2
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
3,3'-Dichlorobenzidine	91-94-1
trans-1,4-Dichloro-2-butene	110-57-6
Dichlorodifluoromethane; CFC 12	75-71-8
1,1-Dichloroethane; Ethylidene chloride	75-34-3
1,2-Dichloroethane; Ethylene dichloride	107-06-2
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
2,4-Dichlorophenol	120-83-2
2,6-Dichlorophenol	87-65-0

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1,2-Dichloropropane; Propylene dichloride	78-87-5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9
2,2-Dichloropropane; Isopropylidene chloride	594-20-7
1,1-Dichloropropene	563-58-6
cis-1,3-Dichloropropene	10061-01-5
trans-1,3-Dichloropropene	10061-02-6
Dieldrin	60-57-1
Diethyl phthalate	84-66-2
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2
Dimethoate	60-51-5
p-(Dimethylamino)azobenzene	60-11-7
7,12-Dimethylbenz[a]anthracene	57-97-6
3,3'-Dimethylbenzidine	119-93-7
2,4-Dimethylphenol; m-Xylenol	105-67-9
Dimethyl phthalate	131-11-3
m-Dinitrobenzene	99-65-0
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1
2,4-Dinitrophenol	51-28-5
2,4-Dinitrotoluene	121-14-2
2,6-Dinitrotoluene	606-20-2
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7
Di-n-octyl phthalate	117-84-0
Diphenylamine	122-39-4
Disulfoton	298-04-4
Endosulfan I	959-98-8
Endosulfan II	33213-65-9
Endosulfan sulfate	1031-07-8
Endrin	72-20-8
Endrin aldehyde	7421-93-4
Ethylbenzene	100-41-4
Ethyl methacrylate	97-63-2
Ethyl methanesulfonate	62-50-0
Famphur	52-85-7
Fluoranthene	206-44-0
Fluorene	86-73-7
Fluoride	
Heptachlor	76-44-8
Heptachlor epoxide	1024-57-3
Hexachlorobenzene	118-74-1
Hexachlorobutadiene	87-68-3
Hexachlorocyclopentadiene	77-47-4
Hexachloroethane	67-72-1
Hexachloropropene	1888-71-7
2-Hexanone; methyl butyl ketone	591-78-6
Indeno(1,2,3-cd)pyrene	193-39-5
Isobutyl alcohol	78-83-1
Isodrin	465-73-6
Isophorone	78-59-1
Isosafrole	120-58-1
Kepone	143-50-0
Lead	(Total)
Lead	(Dissolved)
Lithium	(Total)
Lithium	(Dissolved)
Mercury	(Total)
Mercury	(Dissolved)
Methacrylonitrile	126-98-7

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Methapyrilene	91-80-5
Methoxychlor	72-43-5
Methyl bromide; Bromomethane	74-83-9
Methyl chloride; Chloromethane	74-87-3
3-Methylcholanthrene	56-49-5
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
Methyl iodide; Iodomethane	74-88-4
Methyl methacrylate	80-62-6
Methyl methanesulfonate	66-27-3
2-Methylnaphthalene	91-57-6
Methyl parathion; Parathion methyl	298-00-0
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
Methylene bromide; Dibromomethane	74-95-3
Methylene chloride; Dichloromethane	75-09-2
Naphthalene	91-20-3
1,4-Naphthoquinone	130-15-4
1-Naphthylamine	134-32-7
2-Naphthylamine	91-59-8
Nickel	(Total)
Nickel	(Dissolved)
Nitrate (as N)	
o-Nitroaniline; 2-Nitroaniline	88-74-4
m-Nitroaniline; 3-Nitroaniline	99-09-2
p-Nitroaniline; 4-Nitroaniline	100-01-6
Nitrobenzene	98-95-3
o-Nitrophenol; 2-Nitrophenol	88-75-5
p-Nitrophenol; 4-Nitrophenol	100-02-7
N-Nitroso-di-n-butylamine	924-16-3
N-Nitrosodiethylamine	55-18-5
N-Nitrosodimethylamine	62-75-9
N-Nitrosodiphenylamine	86-30-6
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621-64-7
N-Nitrosomethylethylamine	10595-95-6
N-Nitrosopiperidine	100-75-4
N-Nitrosopyrrolidine	930-55-2
5-Nitro-o-toluidine	99-55-8
Parathion	56-38-2
Pentachlorobenzene	608-93-5
Pentachloronitrobenzene	82-68-8
Pentachlorophenol	87-86-5
Phenacetin	62-44-2
Phenanthrene	85-01-8
Phenol	108-95-2
p-Phenylenediamine	106-50-3
Phorate	298-02-2
Polychlorinated biphenyls; PCBs; Aroclors	See note 5
Pronamide	23950-58-5
Propionitrile; Ethyl cyanide	107-12-0
Pyrene	129-00-0
Safrole	94-59-7
Selenium	(Total)
Selenium	(Dissolved)
Silver	(Total)
Silver	(Dissolved)
Silvex; 2,4,5-TP	93-72-1
Styrene	100-42-5
Sulfide	18496-25-8

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2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5
1,2,4,5-Tetrachlorobenzene	95-94-3
1,1,1,2-Tetrachloroethane	630-20-6
1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
2,3,4,6-Tetrachlorophenol	58-90-2
Thallium	(Total)
Thallium	(Dissolved)
Tin	(Total)
Tin	(Dissolved)
Toluene	108-88-3
o-Toluidine	95-53-4
Toxaphene	See note 6
1,2,4-Trichlorobenzene	120-82-1
1,1,1-Trichloroethane; Methylchloroform	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene; Trichloroethene	79-01-6
Trichlorofluoromethane; CFC-11	75-69-4
2,4,5-Trichlorophenol	95-95-4
2,4,6-Trichlorophenol	88-06-2
1,2,3-Trichloropropane	96-18-4
0,0,0-Triethyl phosphorothioate	126-68-1
sym-Trinitrobenzene	99-35-4
Vanadium	(Total)
Vanadium	(Dissolved)
Vinyl acetate	108-05-4
Vinyl chloride; Chloroethene	75-01-4
Xylene (Total)	See note 7
Zinc	(Total)
Zinc	(Dissolved)

Notes:

¹Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

²Chemical Abstracts Service registry number. Where “Total” is entered, all species in the ground water that contain this element are included. Where “Dissolved” is entered, all species in a filtered sample of the ground water that contain this element are included.

³This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).

⁴Chlordane. This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).

⁵Polychlorinated biphenyls (CAS RN 1336-36-3). This category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5).

⁶Toxaphene. This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), that is, chlorinated camphene.

⁷Xylene (total). This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

(Solid Waste Management Board; 329 IAC 10-21-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1880)

Rule 22. Municipal Solid Waste Landfills; Closure Requirements

329 IAC 10-22-1 Performance standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The owner, operator, or permittee of an MSWLF shall close the MSWLF in a manner that:

- (1) minimizes the need for further maintenance;

(2) controls post-closure escape of waste, waste constituents, leachate, contaminated run-off, or waste decomposition products to the ground or surface waters or the atmosphere; and

(3) at a minimum, is in compliance with applicable closure provisions and conditions imposed in the facility permit.

(Solid Waste Management Board; 329 IAC 10-22-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1882; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3859)

329 IAC 10-22-2 Closure plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) The owner, operator, or permittee of an MSWLF shall prepare a written closure plan. The plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner as part of the permit. The approved closure plan becomes a condition of the permit upon approval.

(b) The owner, operator, or permittee of MSWLFs permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, that:

(1) closed on or before January 1, 1998, must close under the MSWLF's existing approved closure plans; or

(2) intend to close after January 1, 1998, must:

(A) revise closure plans to meet the requirements of subsection (c); and

(B) submit the revised plans to the commissioner for approval within six (6) months after the effective date of this article or the anniversary date of the approved closure plans, whichever is earlier.

(c) The closure plan must identify the steps necessary to completely close the MSWLF at any point during its active life in accordance with section 1 of this rule. The plan must be certified by a registered professional engineer. The closure plan must include the following:

(1) A description of the steps that will be used to partially close, if applicable, and finally close the MSWLF in accordance with section 1 of this rule.

(2) A listing of labor, materials, and testing necessary to close the MSWLF.

(3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include the following:

(A) The total time required to close the MSWLF.

(B) The time required for completion of intervening closure activities.

(4) An estimate of the maximum inventory of wastes that will be on-site over the active life of the MSWLF.

(5) An estimate of the cost per acre of providing final cover and vegetation. Such cost must reflect cost necessary to close the MSWLF by the third party as required by the approved plan, but must not be less than:

(A) twenty thousand dollars (\$20,000) per acre to close MSWLF units that are constructed with only a soil liner; and

(B) seventy-five thousand dollars (\$75,000) per acre for MSWLF units that are constructed with a composite bottom liner system.

(6) The closure cost estimate must include a ten percent (10%) contingency cost on the total closure cost of the MSWLF.

(7) If the owner, operator, or permittee of an MSWLF utilizes the closure trust fund option or funds the letter of credit on an annual basis, as contained in 329 IAC 10-39, then for each yearly period following the beginning of operation of the MSWLF, the closure plan must specify the maximum area of the MSWLF into which municipal solid waste will have been deposited through that year of the MSWLF's life and must delineate such areas on the copy of the facility's final contour map. The closure plan must list closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivisions (5) and (6).

(8) An estimate of the yearly maintenance costs for a dike or dikes required under 329 IAC 10-16-2.

(9) A construction quality assurance and construction quality control plan for the construction and installation of the final cover system as required by this rule.

(10) A description of the final cover, designed in accordance with this rule, and the methods and procedures to be used to install the cover.

(11) An estimate of the largest area of the MSWLF ever requiring a final cover as required under this rule at any time during the active life.

(12) If property is used to fulfill or reduce the cost of closure funding, the property must not be sold, relinquished, or used for any other purpose. If the property is proposed to be sold, relinquished, or used for any other purpose, the owner, operator, or permittee shall complete the following requirements:

(A) The closure plan must be updated under this section and submitted to the commissioner.

(B) The closure financial responsibility must be updated under 329 IAC 10-39 and submitted to the commissioner.

(C) The owner, operator, or permittee shall receive approval from the commissioner for the requirements under clauses (A) and (B) prior to selling, relinquishing, or using the property for any other purpose.

(Solid Waste Management Board; 329 IAC 10-22-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1882; errata filed Apr 4, 1996, 4:00 p.m.:)

19 IR 2047; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3859)

329 IAC 10-22-3 Partial closure certification

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) The owner, operator, or permittee of an MSWLF may submit partial closure certification for portions of the MSWLF that have received final cover and are graded and have established vegetation in accordance with the applicable provisions of this rule, 329 IAC 10-20, and the approved closure plan prior to closure of the MSWLF.

(b) The owner, operator, or permittee of an MSWLF shall submit to the commissioner a certification signed by the owner, operator, or permittee and an independent registered professional engineer that specifically identifies the closed areas and that specifies that the partial closure has been accomplished in accordance with the approved closure plan and this article. Certification of partial closure must not be made for an area until the final cover has been completely provided for that area and vegetation has been established.

(c) The partial closure certification will be deemed adequate unless, within one hundred fifty (150) days of receipt of the partial closure certification, the commissioner issues a notice of deficiency of closure, including action necessary to correct the deficiency. (*Solid Waste Management Board; 329 IAC 10-22-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3860*)

329 IAC 10-22-4 Initiation of final closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 4. (a) Within fifteen (15) days after the last receipt of waste, the owner, operator, or permittee of an MSWLF shall notify the commissioner in writing that the MSWLF has stopped accepting waste and final closure has commenced on all areas not certified as partially closed. Final closure must be in accordance with the approved closure plan.

(b) The owner, operator, or permittee shall complete other closure activities in accordance with the approved closure plan. (*Solid Waste Management Board; 329 IAC 10-22-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3860*)

329 IAC 10-22-5 Completion of closure and final cover

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 5. (a) The owner, operator, or permittee of an MSWLF shall complete closure activities and complete application of final cover within one hundred eighty (180) days on an area in the MSWLF that:

- (1) has received the area's final waste volume; or
- (2) is filled to the area's final approved waste elevation.

(b) Upon application for an extension by the owner, operator, or permittee, a one (1) time extension of the closure period may be granted by the commissioner if the owner, operator, or permittee demonstrates that closure will, by necessity, take longer than one hundred eighty (180) days and the owner, operator, or permittee has taken and will continue to take all steps to prevent threats to human health and the environment. The extension of the closure period must not be longer than three hundred sixty-five (365) days immediately following the one hundred eighty (180) days of the original closure period. (*Solid Waste Management Board; 329 IAC 10-22-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3860*)

329 IAC 10-22-6 Final cover requirements for new MSWLF units or existing MSWLF units that have a composite bottom liner and a leachate collection system

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) The owner, operator, or permittee of an MSWLF containing new MSWLF units or existing MSWLF units that have a composite bottom liner system and a leachate collection system shall install a final cover system as defined in subsection (b) within one hundred eighty (180) days on any area in the MSWLF units that:

- (1) has received the final waste volume; or
- (2) is filled to the approved final waste elevation;

or as approved under section 5(b) of this rule.

(b) Final cover systems for new MSWLF units or existing MSWLF units that have a composite bottom liner system must consist of the following, starting from the top of the municipal solid waste mass (waste placement) to the top of the final cover system:

- (1) A methane gas venting layer must be installed directly over the waste. This layer must consist of twelve (12) inches of drainage layer material that has a hydraulic conductivity of 1×10^{-3} centimeters per second or more. Geosynthetic material (geotextile, geonet, both, or other material as approved by the commissioner) may be substituted for drainage layer material in the gas venting layer if equivalent or better performance is demonstrated. The owner, operator, or permittee must demonstrate that transmissivity and permitivity provide for the anticipated gas discharge quantity.
- (2) A soil barrier layer must be installed over the methane gas venting layer. The soil barrier must consist of a lower component of twelve (12) inches of structural fill and an upper component of twelve (12) inches of compacted earthen material with a hydraulic conductivity of 1×10^{-6} centimeters per second or less. The upper component must be soil of Unified Soil Classification ML, CL, MH, CH, or OH. Other suitable material approved by the commissioner may be used if it provides an adequate level of protection to human health and the environment. Grain size, Atterberg limits, and hydraulic conductivity tests as approved by the commissioner must be performed to confirm the quality of the final cover.
- (3) A minimum thirty (30) mil geomembrane top liner must be installed directly in contact with the upper portion of the soil barrier layer. If the geomembrane is composed of high density polyethylene (HDPE), then it must be at least sixty (60) mil thick. The commissioner may require an increase in the thickness of the geomembrane if it is determined that increased thickness is necessary to prevent failure under stresses caused by construction equipment and waste settlement during the post-closure care period.
- (4) A drainage layer must be installed over the geomembrane liner. The drainage layer must consist of twelve (12) inches of material that has a hydraulic conductivity of 1×10^{-3} centimeters per second or more. If geosynthetic materials are used as a drainage layer, the effective transmissivity must be equivalent to twelve (12) inches of drainage layer with a hydraulic conductivity of 1×10^{-3} centimeters per second or more.
- (5) A top protective soil layer must overlay the drainage layer. This layer must consist of at least eighteen (18) inches of earthen material. If geosynthetic materials are used as a drainage layer, at a minimum, thirty (30) inches of earthen material must be placed on top of the geosynthetic materials. The protective soil layer material must be designed to not clog the drainage layer.
- (6) A vegetative layer must overlay the top protective layer. This layer must consist of at least six (6) inches of earthen material capable of sustaining vegetation. In any case, a total thickness of earthen material over the geomembrane top liner must not be less than thirty-six (36) inches.
- (7) The maximum projected erosion rate of the final cover must be no more than five (5) tons per acre per year.
- (8) The final cover must have a slope no less than four percent (4%) or two and twenty-nine hundredths (2.29) degrees and no greater than thirty-three percent (33%) or eighteen and twenty-six hundredths (18.26) degrees.
- (c) The requirement in subsection (b)(1) may be waived by the commissioner if the following apply:
 - (1) The MSWLF has a permitted active gas recovery and extraction system in place.
 - (2) The permitted active gas extraction system at the MSWLF extracts or recovers at least sixty percent (60%) of the total volume of landfill gas produced or generated by the MSWLF.

(Solid Waste Management Board; 329 IAC 10-22-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1883; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3861)

329 IAC 10-22-7 Final cover requirements for existing MSWLF units constructed without a composite bottom liner

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) The owner, operator, or permittee of an MSWLF containing existing MSWLF units constructed without a composite bottom liner shall install a final cover system as appropriate to subsection (b) or (c) within one hundred eighty (180) days on any area in the MSWLF units that:

- (1) has received the final waste volume; or
- (2) is filled to the approved final waste elevation;

unless otherwise approved by the commissioner or as approved under section 5(b) of this rule.

(b) Unless otherwise approved by the commissioner, final cover systems for existing MSWLF units constructed with a soil bottom liner and a leachate collection system that were permitted under 329 IAC 2, which was repealed in 1996, and closing after January 1, 1998, must consist of the following:

- (1) On slopes equal to or less than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover must be constructed as follows:
 - (A) A twenty-four (24) inch barrier layer of soil of the Unified Soil Classification ML, CL, MH, CH, or OH directly over the waste. Other suitable material approved by the commissioner may be used if it provides an adequate level of

protection to human health and the environment. The soil must be compacted to achieve a hydraulic conductivity equal to 1×10^{-7} centimeters per second or less. Grain size, Atterberg limits, and hydraulic conductivity tests as approved by the commissioner or as required by this article must be performed to confirm the quality of the final cover.

(B) A vegetative layer must overlay the top protective layer. This layer must consist of at least six (6) inches of earthen material capable of sustaining vegetation.

(2) On slopes greater than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover must be constructed as follows:

(A) A twenty-four (24) inch barrier layer of soil of the Unified Soil Classification ML, CL, MH, CH, or OH directly over the waste. Other suitable material approved by the commissioner may be used if it provides an adequate level of protection to human health and the environment. The soil must be compacted to achieve a hydraulic conductivity equal to 1×10^{-6} centimeters per second or less. Grain size, Atterberg limits, and hydraulic conductivity tests as approved by the commissioner or as required by this article must be performed to confirm the quality of the final cover.

(B) A vegetative layer consisting of at least six (6) inches of earthen material capable of sustaining vegetation must overlay the barrier layer.

(C) An increase in the thickness of the layers required in this subdivision may be required by the facility permit or the commissioner.

(3) The maximum projected erosion rate of the final cover must be no more than five (5) tons per acre per year.

(4) The final cover must have a slope:

(A) no less than four percent (4%) or two and twenty-nine hundredths (2.29) degrees; and

(B) no greater than thirty-three percent (33%) or eighteen and twenty-six hundredths (18.26) degrees.

(c) Unless otherwise approved by the commissioner, final cover systems for existing MSWLF units constructed without a soil bottom liner or a leachate collection system that were permitted under 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, and closing after January 1, 1998, must consist of the following:

(1) On slopes equal to or less than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover not including benches, swales, and drainage features, must be constructed as specified in section 6(b)(1) through 6(b)(7) of this rule.

(2) On slopes greater than fifteen percent (15%) or eight and fifty-three hundredths (8.53) degrees, the final cover must be constructed as specified in subsection (b)(2).

(3) The maximum projected erosion rate of the final cover must be no more than five (5) tons per acre per year.

(4) The final cover must have a slope:

(A) not less than four percent (4%) or two and twenty-nine hundredths (2.29) degrees; and

(B) not greater than thirty-three percent (33%) or eighteen and twenty-six hundredths (18.26) degrees.

(Solid Waste Management Board; 329 IAC 10-22-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1884; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2813; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3861)

329 IAC 10-22-8 Final closure certification

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 8. (a) Following closure of an MSWLF unit at an MSWLF, the owner, operator, or permittee shall submit to the commissioner a certification signed by the owner, operator, or permittee and an independent registered professional engineer that the partial closure involving an MSWLF unit or final closure of the entire MSWLF has been completed in accordance with the approved closure plan. Certification of closure must not be made for an area until the final cover has been completed and vegetation has been established.

(b) Following final closure of all MSWLF units at an MSWLF, the owner, operator, or permittee shall record with the county land recording authority, a notation on the deed to the MSWLF property, or some other instrument normally examined during title search, and notify the commissioner in writing that the notation has been recorded. The notation on the deed must in perpetuity notify any potential purchaser of the property that the land has been used as a MSWLF. At a minimum, the recording must contain the following:

(1) The general types and location of waste.

(2) The depth of fill.

(3) A plot plan, with surface contours at intervals of two (2) feet, which must indicate:

(A) surface water run-off directions;

(B) surface water diversion structures after completion of the operation; and

(C) final grade contours.

(4) A statement that no construction, installation of wells, pipes, conduits, or septic systems, or any other excavation will be done on the property without approval of the commissioner.

(c) The final closure certification will be deemed adequate unless within one hundred fifty (150) days of receipt of the final closure certification the commissioner issues a notice of deficiency of closure, including action necessary to correct the deficiency. *(Solid Waste Management Board; 329 IAC 10-22-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1885; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2814; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3862)*

329 IAC 10-22-9 Areas of MSWLFs closing prior to the effective date of this rule

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 9. Areas of MSWLFs that are certified partially closed on or before the effective date of this article must be closed in accordance with the approved closure plan and the applicable law in effect at the time of partial closure. The partial closure certification must be submitted to the commissioner on or before the effective date of this article. *(Solid Waste Management Board; 329 IAC 10-22-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1885; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2815; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3863)*

329 IAC 10-22-10 Additional final cover requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 10. Any final cover required by this rule must be constructed and tested according to all the applicable construction quality control and construction quality assurance (CQC/CQA) requirements in 329 IAC 10-15-7 and 329 IAC 10-17. *(Solid Waste Management Board; 329 IAC 10-22-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1886)*

Rule 23. Municipal Solid Waste Landfills; Post-Closure Requirements

329 IAC 10-23-1 Performance standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The owner, operator, or permittee of an MSWLF shall maintain the MSWLFs during the post-closure period in a manner that:

- (1) minimizes the need for further maintenance;
- (2) controls post-closure release of waste, waste constituents, leachate, contaminated run-off, or waste decomposition products to the ground or surface waters or the atmosphere; and
- (3) at a minimum, is in compliance with applicable closure provisions and post-closure conditions imposed in the MSWLF permit.

(Solid Waste Management Board; 329 IAC 10-23-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1886; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3863)

329 IAC 10-23-2 Post-closure duties

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. (a) The owner, operator, or permittee of an MSWLF has the following duties after closure:

- (1) Post-closure activities must be performed in accordance with the approved post-closure plan as specified in section 3 of this rule.
- (2) Inspection of the MSWLF at least twice per year with a written report on the condition of the MSWLF to be submitted to the commissioner.
- (3) Maintenance of the integrity of the geomembrane cap, if applicable, and the minimum thickness of final cover and vegetation as required by 329 IAC 10-20 and 329 IAC 10-22 or as approved by the commissioner.
- (4) Maintenance of the final contours of the MSWLF in accordance with the applicable standards of 329 IAC 10-20 and 329 IAC 10-22 and, at a minimum, to provide that no ponding of water occurs on filled areas.
- (5) Control of any vegetation on vehicular access ways to monitoring wells as required by 329 IAC 10-20-2(d).
- (6) Control of vegetation at the MSWLF as necessary to enable determination of the need for slope and cover maintenance and leachate outbreak abatement.
- (7) Maintenance of access control and benchmarks at the MSWLF.
- (8) Maintenance and monitoring of the dike or dikes required under 329 IAC 10-16-2.

(9) If ownership of the land or MSWLF changes at any time during the post-closure period, the new owner must have a written agreement with the past owner which states the new owner will monitor and maintain the dike or dikes required by 329 IAC 10-16-2 during the subsequent post-closure period.

(10) Maintenance and monitoring of leachate collection and treatment systems and methane control systems.

(11) Control of any leachate or gas generated at the MSWLF as required by 329 IAC 10-20.

(12) Erosion and sediment control measures must be instituted to comply with 329 IAC 10-20-12.

(13) An MSWLF that closes:

(A) prior to the effective date required by 40 CFR 258 for the MSWLF units' ground water monitoring, must continue to monitor ground water as required by the rules in force at the time the facility entered into post-closure;

(B) on or after the effective date required by 40 CFR 258 for the MSWLF units' ground water monitoring, must monitor ground water after the effective date of this article as required by 329 IAC 10-21; or

(C) under any other article is required to follow the:

(i) post-closure plan as required by the rules in force at the time the MSWLF entered into post-closure; or

(ii) rules in force at the time the MSWLF entered into post-closure if the rules in force do not require a post-closure plan.

(14) In addition to the corrective action program required by the rules under which the facility closed, the commissioner may require performance of corrective action measures within 329 IAC 10-21-13 if the MSWLF:

(A) closed prior to the effective date of this article;

(B) is monitoring ground water in accordance with the rules in force at the time the MSWLF entered into post-closure; and

(C) finds a corrective action program is applicable under the rules in force at the time the MSWLF entered post-closure.

(b) Post-closure requirements imposed by this section must be followed for a period of thirty (30) years after the following applicable date:

(1) If the final closure certification is deemed adequate, the date the final closure certification is received by the commissioner in accordance with 329 IAC 10-22-8(a).

(2) If the final closure certification is deemed inadequate, the date the commissioner approves any actions necessary to correct items listed in a notice of deficiency of closure certification under 329 IAC 10-22-8(c).

(c) The length of the post-closure care period may be increased by the commissioner if the commissioner determines that the lengthened period is necessary to protect human health and the environment. The standards to determine an increased post-closure care period include, but are not limited to:

(1) stability of final cover;

(2) maintenance problems with an MSWLF certified as closed;

(3) evidence of ground water contamination;

(4) quantity of gas produced and managed; or

(5) reliability of ground water monitoring well system.

(Solid Waste Management Board; 329 IAC 10-23-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1886; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2815; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3863; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27)

329 IAC 10-23-3 Post-closure plan

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) The owner, operator, or permittee of an MSWLF shall have a written post-closure plan. The post-closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner. The approved post-closure plan must become a condition of the permit. If the permit expires or is revoked, the post-closure plan remains effective and enforceable during the post-closure period. If the plan is determined to be unacceptable, the commissioner shall identify the items needed to make it complete.

(b) The owner, operator, or permittee of existing MSWLFs shall revise and submit post-closure plans meeting the requirements of this rule within six (6) months after the effective date of this article or the anniversary date of the approved post-closure plan, whichever is earlier.

(c) The post-closure plan must identify the activities that will be carried on after closure under section 2 of this rule and must include at least the following:

(1) A description of the planned ground water monitoring activities and the frequency at which they will be performed.

(2) A description of the planned maintenance activities and the frequency at which they will be performed.

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the final cover, liner, or any other component of the containment system, or the function of the

monitoring system, unless necessary to comply with this article. The commissioner may approve other disturbances if the owner, operator, or permittee demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(4) The name, address, and telephone number of the owner, operator, or permittee with responsibility for maintaining the site after closure whom the commissioner may contact about the MSWLF during the post-closure period.

(5) A post-closure cost estimate in accordance with 329 IAC 10-39. Post-closure costs must be calculated based on the cost necessary for the work to be performed by a third party for thirty (30) years of the post-closure period and must include the following:

(A) For post-closure maintenance of final cover and vegetation, the amount per acre must be ten percent (10%) of the cost calculated under 329 IAC 10-22-2(c)(5) multiplied by the total acreage of the site permitted for filling.

(B) At a minimum, the amount of funds necessary for leachate treatment and disposal must be based on the following gallons per acre per day over the thirty (30) year post-closure period:

<u>Year</u>	<u>Gallons Per Acre Per Day (GPAD)</u>
1-5	150
6-10	80
11-15	50
16-20	30
21-25	20
26-30	10

The commissioner may increase or decrease this amount of funding if it is determined that, based on a site-specific basis, more or less funds are necessary.

(C) At a minimum, the amount of funds necessary to provide for post-closure activities must include funds for the following:

- (i) Ground water monitoring and well maintenance.
- (ii) Methane monitoring and maintenance.
- (iii) Maintenance of drainage and erosion control system.
- (iv) Maintenance of leachate collection system.
- (v) Maintenance of access control.
- (vi) Control of vegetation.
- (vii) Maintenance of the dike or dikes if required under 329 IAC 10-16-2.

(6) The post-closure cost estimate must include a twenty-five percent (25%) contingency cost based on total post-closure cost.

(7) If the property is used to fulfill or reduce the cost of post-closure funding, the property must not be sold, relinquished, or used for any other purpose. If the property is proposed to be sold, relinquished, or used for any other purpose, the owner, operator, or permittee shall complete the following requirements:

- (A) The post-closure plan must be updated under this section and submitted to the commissioner.
- (B) The post-closure financial responsibility must be updated under 329 IAC 10-39 and submitted to the commissioner.
- (C) The owner, operator, or permittee shall receive approval from the commissioner for the requirements under clauses (A) and (B) prior to selling, relinquishing, or using the property for any other purpose.

(d) Proposed changes to the approved post-closure plans may be submitted to the commissioner during the post-closure period.

The commissioner shall provide notification that the modification is not acceptable within sixty (60) days of receiving the modification request. If the owner or operator does not receive notification from the commissioner within sixty (60) days, the post-closure plan modifications may be installed in accordance with documentation provided to the commissioner. (*Solid Waste Management Board; 329 IAC 10-23-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1887; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2816; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3864*)

329 IAC 10-23-4 Post-closure certification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. When the post-closure care requirements of this rule have been completed, the owner, operator, or permittee shall submit a certification statement signed by the owner, operator, or permittee and an independent registered professional engineer that the post-closure care requirements have been met and the MSWLF has stabilized. The post-closure certification will be deemed adequate, unless within one hundred fifty (150) days of receipt of the post-closure certification and subsequent review, the commissioner issues notice of the deficiency of post-closure, including actions necessary to correct the deficiency. (*Solid Waste Management Board; 329 IAC 10-23-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1887; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3865*)

329 IAC 10-23-5 Responsibility after post-closure to correct nuisance

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 5. Subsequent to the completion of post-closure, the owner, operator, or permittee of a closed MSWLF or the owner of real estate upon which a closed MSWLF is located, shall be responsible for correcting and controlling any nuisance conditions occurring at the MSWLF. *(Solid Waste Management Board; 329 IAC 10-23-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1888; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3865)*

329 IAC 10-23-6 Elimination of threats to human health or the environment after post-closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 6. Subsequent to the completion of post-closure, the owner, operator, or permittee of a closed MSWLF or the owner of real estate upon which a closed MSWLF is located, shall be responsible for eliminating any threat to human health or the environment. *(Solid Waste Management Board; 329 IAC 10-23-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1888; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3865)*

329 IAC 10-23-7 Remedial action

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-25-4-7; IC 36-9-30

Sec. 7. The commissioner may proceed under IC 13-25-4, and rules adopted under IC 13-25-4-7, which require the owner, operator, or permittee of a closed MSWLF or the owner of real property upon which a closed MSWLF is located, or any other responsible party under IC 13-25-4, to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices, if the commissioner determines that the closed MSWLF is a threat to human health or the environment, due to a release of a hazardous substance from the facility into the environment. *(Solid Waste Management Board; 329 IAC 10-23-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1888; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2816; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3865)*

Rule 24. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Additional Application Requirements to 329 IAC 10-11

329 IAC 10-24-1 General

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. An application for a restricted waste site Type I or Type II or nonmunicipal solid waste landfill permit must be accompanied by the plans or documents specified in this rule, including the following:

- (1) Design drawings and specifications certified by a registered professional engineer.
- (2) Properly titled design drawings.

(Solid Waste Management Board; 329 IAC 10-24-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1888; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-24-2 Plot plans and cross-sectional drawings

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) An application for restricted waste site Type I or Type II or nonmunicipal solid waste landfill must be accompanied by plot plans using:

- (1) a scale of at least one (1) inch equals one hundred (100) feet for a site of less than eighty (80) acres; or
- (2) a scale of at least one (1) inch equals two hundred (200) feet for a facility of eighty (80) acres or more.

A bar scale must be shown on plans in order to properly indicate the scale if size changes occur. All plot plans must include the facility boundaries and indicate each of the required features set forth in this section within three hundred (300) feet of the facility boundaries. All facility plan elevations must correlate with United States Geological Survey (USGS) mean sea level data.

(b) An application for restricted waste site Type I or Type II or nonmunicipal solid waste landfill must be accompanied by the following plot plans and cross sections:

- (1) A plot plan that indicates the following:

- (A) Locations and elevations of all existing and proposed on-site boring locations.
 - (B) Rock outcroppings.
 - (C) Surface water run-off direction.
 - (D) Fences.
 - (E) Utility easements and rights-of-way.
 - (F) Present land surface contours at intervals of no more than five (5) feet.
 - (G) Proposed location of scales required by 329 IAC 10-14-2.
- (2) A plot plan that indicates the fill boundaries and proposed final contours of the site at intervals of no more than two (2) feet.
- (3) A plot plan, with surface contours at intervals of no more than five (5) feet, which indicates initial facility development. Compliance with this plan is a preoperational requirement under 329 IAC 10-27-2. Benchmarks, as required by 329 IAC 10-27-2, must be shown with a description and elevation provided.
- (4) A plot plan, with surface contours at intervals of no more than five (5) feet, which indicates the following:
- (A) Land surface water diversion structures.
 - (B) Berms.
 - (C) Vegetation or fences for visual screening.
 - (D) Sedimentation control structures and erosion control structures.
 - (E) Protective barriers.
 - (F) Leachate collection and methane control systems if proposed.
 - (G) Existing and proposed structures.
 - (H) The precise location of the solid waste boundary.
 - (I) Methods of operation.
 - (J) Direction and order that the operation and development will proceed.
 - (K) Depth of excavation.
 - (L) Length and width of trenches if proposed.
 - (M) Depth of lifts and size of working face.
 - (N) Areas of the site to be used only for acquisition of cover soil.
- (5) Geological cross-sectional drawings of the proposed facility showing the following:
- (A) The types of soil materials or rock strata, as identified by boring logs, from the ground surface to the required boring depth.
 - (B) Depth of proposed fill.
 - (C) Fill boundaries.
 - (D) Present topography, including mean sea level elevations.
- All boring logs must be shown on cross sections. A minimum of two (2) intersecting cross sections must be submitted.
- (6) Cross-sectional drawings of proposed on-site all-weather roads.
- (7) Cross-sectional drawings of proposed sedimentation control structures and erosion control structures, including, but not limited to, berms, dikes, and ditches.
- (8) Cross-sectional drawings of proposed protective barriers, leachate collection, or methane control systems, if applicable.
- (Solid Waste Management Board; 329 IAC 10-24-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1888; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-24-3 Soils, ground water, geology information; certified

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. An application for restricted waste site Type I or Type II or nonmunicipal solid waste landfill must be accompanied by the following information on soils, ground water, and geology, and be certified by a registered professional engineer or certified professional geologist, either of whom shall have education or professional experience in hydrogeology or ground water hydrology:

- (1) The number and location of soil borings completed at the site must be indicated as follows:
- (A) There must be at least one (1) boring for every five (5) acres of fill area up to one hundred (100) acres and one (1) boring for every ten (10) acres of fill area beyond one hundred (100) acres, with a minimum of five (5) borings at any site. The borings must be evenly distributed over the site.
 - (B) Borings must be completed to a depth necessary to indicate compliance with the design standards of 329 IAC 10-26, with a minimum depth of twenty (20) feet below the depth of waste placement or to bedrock, whichever is shallower.
 - (C) At least one (1) of the required borings in clause (A) for sites less than ten (10) acres and at least two (2) borings for sites greater than ten (10) acres must be completed to a depth of at least seventy (70) feet below the depth of waste placement, or at least twenty (20) feet into the bedrock, whichever is shallower. The deep borings, where two (2) are

required, must be evenly distributed over the site.

(D) Additional borings, meeting other requirements, may be required to delineate the boundaries of any features pertinent to the site design.

(E) The commissioner may vary the minimum requirements where alternate testing provides comparable information.

(F) The commissioner may require prior notification of the date and time of soil borings.

(2) Boring logs must include the following:

(A) The date of drilling.

(B) The method of drilling.

(C) The method of backfilling and sealing of the borehole.

(D) Textural classification.

(E) The descriptions for:

(i) the entire depth of the boring;

(ii) the depths to and thickness of any water bearing zones; and

(iii) the static water levels immediately following the boring.

The mean sea level surface elevation at each boring must be recorded and submitted with the boring log. The textural classification system utilized must be identified. The commissioner may establish guidance on the recommended sample descriptions to be utilized.

(3) The following testing requirements must apply to the minimum number of borings required under subdivision (1):

(A) Split spoon samples of the unconsolidated material must be taken at an interval of one (1) per two and five-tenths (2.5) feet unless the commissioner otherwise authorizes, based on uniformity of geologic conditions at the site.

(B) For at least three (3) evenly distributed borings, including one (1) of the deep borings required under subdivision (1), split spoon samples of the unconsolidated material must be taken on a continuous basis.

(C) For the deep borings required under subdivision (1), continuous core samples must be taken of any bedrock encountered.

(D) A complete grain size analysis, including Atterberg limits, must be performed on a representative sample from each significant stratum encountered. A significant stratum must be defined as a soil layer with a minimum thickness of eighteen (18) inches which, based on appearance (color and texture), can be visually distinguished from other layers. More than one (1) stratum may be represented by a single grain size analysis and Atterberg limits test where alternating strata of approximately identical color and texture are encountered. At least one (1) grain size analysis and Atterberg limits test must be performed for each of the required minimum number of borings.

(E) Hydraulic conductivity tests must be conducted on each of the required minimum number of borings at a depth of approximately five (5) feet below the proposed base of waste placement.

(F) Cation exchange capacity (CEC) and additional hydraulic conductivity tests must be conducted as necessary to characterize the major strata proposed for use as base and sidewall barriers or cover material.

(G) Hydraulic conductivity sampling must occur by a combination of in situ field tests and laboratory permeability tests on undisturbed Shelby tube samples. CEC must be determined according to the ammonium saturation method specified in Part 2 of "Methods of Soil Analysis" published by the American Society of Agronomy in 1965.

(H) Other tests may be required by the commissioner to further evaluate soil suitability. The commissioner may vary the preceding minimum requirements where alternate testing methods provide comparable information.

(I) All testing and sampling procedures must be identified, and all results must be identified with respect to boring and depth.

(4) Boring samples must be collected and maintained until the solid waste land disposal facility permit is issued, or until any litigation with regard to the proposed permit is resolved, whichever is later.

(5) Borings completed for the purpose of satisfying this section may be converted to piezometers or cased holes to comply with the requirements of section 4 of this rule.

(Solid Waste Management Board; 329 IAC 10-24-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1889; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-24-4 Hydrogeologic study

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) An application for restricted waste site Type I or Type II or nonmunicipal solid waste landfill must be accompanied by a proposal for the installation of monitoring devices, upgradient and downgradient from the landfill with respect to ground water flow direction. The proposal must consist of a hydrogeologic study that provides the information specified in subsection (b). The commissioner may modify the requirements for the proposal dependent on site characteristics. The proposal must be certified by a registered professional engineer or certified professional geologist, either of whom shall have education or professional experience

in hydrogeology or hydrology.

(b) The proposal must provide the following information by means of maps, diagrams, and narrative:

(1) Summary of regional and site-specific geologic information obtained from recent or previous soil borings, coal borings, area well logs, and published reports.

(2) Water table and potentiometric surface maps of the proposed site, including ground water flow directions as follows:

(A) Such maps must be prepared from data from cased holes or piezometers capable of measuring hydraulic head at a maximum screen interval of five (5) feet. This limitation on the maximum length of the screened interval must not apply to those piezometers used to determine a water table surface. At least:

- (i) three (3) such devices must be necessary for fill areas less than twenty (20) acres;
- (ii) four (4) such devices for fill areas between twenty (20) and fifty (50) acres;
- (iii) five (5) such devices for fill areas between fifty (50) and ninety (90) acres; and
- (iv) six (6) such devices for fill areas greater than ninety (90) acres.

The required devices must be evenly distributed over the site. In addition, vertical hydraulic gradients must be measured, at a minimum, of two (2) separate points at the site. Additional nested piezometers or wells may be required by the commissioner to adequately determine vertical components. When more than one (1) aquifer is present within the specified boring depths required in section 3(1)(C) of this rule, individual water table and potentiometric maps may be required.

(B) Monthly water level measurements over a period of at least six (6) months, along with water table and potentiometric surface maps constructed from each measurement event, must be submitted to the commissioner prior to operation of the facility.

(C) The proposal must discuss the evidence and potential of significant components of vertical ground water flow. If there are significant components of vertical flow, cross-sectional representations of equipotential lines and ground water flow direction must be provided that adequately represent the flow beneath the site.

(3) Identification of aquifers below the proposed site to the depth required by section 3(1)(C) of this rule, including the following information:

- (A) Aquifer thickness or thicknesses.
- (B) Lithology.
- (C) Estimated hydraulic conductivity and effective porosity.
- (D) Presence of low permeability units above or below.
- (E) Whether the aquifers are confined or unconfined.

In addition, a general identification and description must be provided for aquifers known to exist from the geologic literature and area well logs.

(4) Known or projected information on hydraulic connections of ground water to surface water and hydraulic connections between different aquifers at site.

(5) Information on the current and proposed use of ground water in the area, including any available information on existing quality of ground water in the aquifer or aquifers.

(6) Diagrammatic representation of proposed monitoring well design and construction, including any available information on existing quality of ground water in the aquifer or aquifers.

(7) Proposed well locations, including length and elevation of screened intervals.

(c) The commissioner may require that pumping tests or similar hydraulic tests be performed to provide a more accurate determination of aquifer characteristics where necessary to determine the adequacy of site or monitoring system design. (*Solid Waste Management Board; 329 IAC 10-24-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1890; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-24-5 Descriptive narrative; restricted waste sites Type I and Type II

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. An application for restricted waste site Type I or Type II must be accompanied by a narrative describing the proposed facility and include the following:

(1) Anticipated quantity, types, and sources of solid waste to be deposited.

(2) The equipment to be used for placement and compaction of all solid waste, excavation of soil, moving of stockpiled soils, and application of cover soil.

(3) Procedures to control fugitive dust.

(4) Sanitary facilities if employees are at the site full time.

(5) A statement as to the existence of and a description of any wells within six hundred (600) feet of the proposed fill area.

(6) A description of the access control at the site.

- (7) A description of the safety equipment to be used at the site.
- (8) The distance from the site to the nearest dwelling.
- (9) A description of the location, amount, and depth of excavation that will occur at the site.
- (10) A description of the supervision that will occur at the site.
- (11) A description of the base flood at the site and whether the site is in the floodway.
- (12) Proposed hours of operation.
- (13) The names and addresses of all adjoining land owners.
- (14) Development and progression of the solid waste land disposal facility as illustrated in the design and operational plan.
- (15) Calculations of quantities of cover soil available and quantities of necessary cover soil. If cover material is obtained from a location other than the proposed facility, its source, quantity, and characteristics must be identified and approved by the commissioner.
- (16) Winter and inclement weather operating procedures, including the method of obtaining and applying cover soil.
- (17) If protective barriers, leachate, or methane control measures are proposed, describe or identify the following:
 - (A) Source and type of material utilized.
 - (B) Method and specifications of construction.
 - (C) Testing procedures for conformance with construction specifications.
 - (D) Storage, treatment, and disposal processes.
 - (E) Any calculations necessary to indicate that the proposed design complies with this article.
- (18) Sampling methodology for all proposed monitoring devices.
- (19) Testing method for all samples to be taken.
- (20) A description of the proposed sign or signs at the site.

(Solid Waste Management Board; 329 IAC 10-24-5; filed Mar 14, 1996, 5:00 p.m.; 19 IR 1891; readopted filed Jan 10, 2001, 3:25 p.m.; 24 IR 1535)

329 IAC 10-24-6 Descriptive narrative; nonmunicipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. An application for a nonmunicipal solid waste landfill must be accompanied by a narrative describing the proposed facility, which must include the following:

- (1) Anticipated quantity, types, and sources of solid waste to be deposited.
- (2) The equipment to be used for placement and compaction of all solid waste, excavation of soil, moving of stockpiled soils, and application of cover soil.
- (3) Procedures to control fugitive dust.
- (4) Sanitary facilities if employees are at the site full time.
- (5) A statement as to the existence of and a description of any wells within six hundred (600) feet of the proposed fill area.
- (6) A description of the access control at the site.
- (7) A description of the safety equipment to be used at the site.
- (8) The distance from the site to the nearest dwelling.
- (9) A description of the location, amount, and depth of excavation that will occur at the site.
- (10) A description of the supervision that will occur at the site.
- (11) A description of the base flood at the site and whether the site is in the floodway.
- (12) Proposed hours of operation.
- (13) The names and addresses of all adjoining land owners.
- (14) Development and progression of the solid waste land disposal facility as illustrated in the design and operational plan.
- (15) Calculations of quantities of cover soil available and quantities of necessary cover soil. If cover material is obtained from a location other than the proposed facility, its source, quantity, and characteristics must be identified and approved by the commissioner.
- (16) Winter and inclement weather operating procedures, including the method of obtaining and applying cover soil.
- (17) If protective barriers, leachate, or methane control measures are proposed, describe or identify the following:
 - (A) Source and type of material utilized.
 - (B) Method and specifications of construction.
 - (C) Testing procedures for conformance with construction specifications.
 - (D) Storage, treatment, and disposal processes.
 - (E) Any calculations necessary to indicate that the proposed design complies with this article.
- (18) Sampling methodology for all proposed monitoring devices.
- (19) Testing method for all samples to be taken.

- (20) A description of the proposed sign or signs at the site.
- (21) Procedures for the disposal of bulky solid waste, such as:
 - (A) refrigerators;
 - (B) stoves;
 - (C) tree trunks;
 - (D) tires;
 - (E) fence wire; and
 - (F) other similar items.

The disposal of all items specified in this subdivision must be in accordance with state and federal regulations.

- (22) Procedures for controlling or handling windblown materials.
- (23) Procedures to be used to prevent and extinguish fires.
- (24) Details of salvage operations, if planned, indicating how the salvage operation must comply with 329 IAC 10-28.
- (25) Personnel and equipment facilities.

(Solid Waste Management Board; 329 IAC 10-24-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1891; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 25. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Location Restrictions

329 IAC 10-25-1 Solid waste boundary limits; restricted waste sites Type I and Type II

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. On and after the effective date of this article, the solid waste boundary of new restricted waste sites Type I and Type II and the additional areas beyond that which has been previously approved for existing restricted waste sites Type I and Type II must be prohibited from the following areas:

- (1) Wetlands in violation of Section 404 of the Clean Water Act as amended February 4, 1987.
- (2) The critical habitat of an endangered species as defined by 50 CFR 17.
- (3) Floodways of drainage areas greater than one (1) square mile, without the approval of the department of natural resources, and floodways without provisions to prevent washout of the waste.
- (4) Within areas of karst topography, without provisions to collect and contain all of the leachate generated, and without a demonstration that the integrity of the landfill will not be damaged by subsidence.
- (5) Over mines unless it is demonstrated that the integrity of the landfill will not be damaged by subsidence.
- (6) Within six hundred (600) feet of a potable water well, in use as a water supply for a dwelling or dwellings on the date of public notice for zoning approval for the permitted activity or the date of public notice by the commissioner of the permit application, whichever occurs first, unless written consent is obtained from the owner of the well.
- (7) Within six hundred (600) feet of any dwelling, in existence on the date of public notice for zoning approval for the permitted activity or the date of public notice by the commissioner of the permit application, whichever occurs first, unless written consent has been obtained from the occupant and the owner of the dwelling.
- (8) Within one hundred (100) feet of the normal water line of any lake, reservoir, or continuously flowing stream.
- (9) Within the floodplain unless the waste is protected from floodwater inundation by a dike with a top elevation not less than three (3) feet above the base flood elevation.
- (10) Within fifty (50) feet of the real property boundaries of the facility.

(Solid Waste Management Board; 329 IAC 10-25-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1892; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-25-2 Solid waste boundary limits; nonmunicipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. On and after the effective date of this article, the solid waste boundary of new nonmunicipal solid waste landfills and the additional areas beyond that which has been previously approved for existing nonmunicipal solid waste landfills must be prohibited from the following areas:

- (1) Wetlands in violation of Section 404 of the Clean Water Act as amended February 4, 1987.
- (2) The critical habitat of an endangered species as defined by 50 CFR 17.
- (3) Floodways of drainage areas greater than one (1) square mile, without the approval of the department of natural resources and floodways without provisions to prevent washout of the waste.
- (4) Within areas of karst topography, without provisions to collect and contain all of the leachate generated, and without a

demonstration that the integrity of the landfill will not be damaged by subsidence.

(5) Over mines, unless it is demonstrated that the integrity of the landfill will not be damaged by subsidence.

(6) Within six hundred (600) feet of a potable water well, in use as a water supply for a dwelling or dwellings on the date of public notice for zoning approval for the permitted activity or the date of public notice by the commissioner of the permit application, whichever occurs first, unless written consent is obtained from the owner of the well.

(7) Within six hundred (600) feet of any dwelling, in existence on the date of public notice for zoning approval for the permitted activity or the date of public notice by the commissioner of the permit application, whichever occurs first, unless written consent has been obtained from the occupant and the owner of the dwelling.

(8) Within one hundred (100) feet of the normal water line of any lake, reservoir, or continuously flowing stream.

(9) Within the floodplain unless the waste is protected from floodwater inundation by a dike with a top elevation not less than three (3) feet above the base flood elevation.

(10) Within one hundred (100) feet of the real property boundaries of the facility.

(11) Within one thousand two hundred (1,200) feet of any public water supply well, in use as such on the date of public notice for zoning approval for the permitted activity or the date of public notice by the commissioner of the permit application, whichever occurs first, unless written consent is obtained from the owner of the well.

(Solid Waste Management Board; 329 IAC 10-25-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1892; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 26. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Liner System Design Standards and Height Increases

329 IAC 10-26-1 Design standards; restricted waste sites Type I and Type II

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) On and after the effective date of this article, for new restricted waste sites Type I and Type II or any increased height and horizontal expansions of the fill area beyond that which had been approved previously, a barrier must be placed between the solid waste and an aquifer. The barrier must consist of the following:

(1) Soil, whether undisturbed, constructed, or a combination thereof, with an equivalent hydraulic conductivity through the barrier of less than or equal to 1×10^{-6} centimeters per second.

(2) A minimum thickness consisting of the following:

(A) For Type I sites, fifteen (15) feet or ten (10) feet if the waste is demonstrated to have an equivalent hydraulic conductivity through the barrier of less than 1×10^{-6} centimeters per second. A greater thickness may be required where necessary to protect human health and the environment.

(B) For Type II sites, a range between five (5) feet and ten (10) feet depending upon the permeability of the waste.

(b) Barrier thickness as specified in subsection (a) may be increased due to cation exchange capacities less than ten (10) milliequivalents per one hundred (100) grams or decreased due to lack of ground water resources in the area or alternate technology such as synthetic liners and leachate collection. *(Solid Waste Management Board; 329 IAC 10-26-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1892; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-26-2 Design standards; nonmunicipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. On and after the effective date of this article, the fill area of new nonmunicipal solid waste landfills and horizontal expansions of the fill area to areas beyond that which previously have been approved for existing facilities, the following must be required:

(1) The following are requirements for nonmunicipal solid waste landfills, except for the alternative provisions of subdivision

(2):

(A) Have a leachate collection system with the following specifications:

(i) A drainage layer overlying the entire base of the proposed fill area, with a minimum thickness of one (1) foot and a minimum hydraulic conductivity of not less than 1×10^{-3} centimeters per second.

(ii) The base of the drainage layer must have a minimum slope of two percent (2%) toward the leachate collection lines.

(iii) The upper three (3) feet of material beneath the drainage layer and piping must be recompacted to achieve an equivalent hydraulic conductivity of not more than 1×10^{-7} centimeters per second.

(iv) The system must be designed to limit the leachate level above the base of the landfill to a maximum of one

- (1) foot under the conditions that would be present after the final cover has been placed at the landfill.
- (v) A piping system with a minimum slope of five-tenths percent (0.5%) and a minimum diameter of six (6) inches.
- (vi) A maximum length of leachate collection lines that must not exceed the capabilities of available clean-out devices.
- (vii) The design submitted for the leachate collection system must adequately address the following:
 - (AA) Prevention of crushing and clogging of the leachate collection system.
 - (BB) Protection of the liner and the leachate collection system from damage due to uplift from hydrostatic forces.
 - (CC) Phasing of construction and inspection procedures to provide for waste disposal capacity during periods of inclement weather.
 - (DD) Prevention of damage to the system due to freeze/thaw and wet/dry cycles.
 - (EE) Storage of collected leachate on-site prior to disposal in a manner adequate to prevent leachate releases to the environment.
- (viii) Prior to the placement of waste in an area, a report must be submitted to the commissioner by a registered professional engineer, certifying that the leachate collection system in that area has been constructed according to the approved plans. The report must indicate the boundaries of the area being certified and must include the results of testing conducted.

- (B) Place a barrier immediately beneath the base of the leachate collection system drainage layer and piping of at least ten (10) feet of material with an equivalent hydraulic conductivity of not more than 1×10^{-6} centimeters per second.
- (C) The system may be designed with a different minimum slope than specified in clause (A)(ii) and may be operated at a different leachate level than specified in clause (A)(iv) if it is demonstrated that a comparable level of leachate migration control is provided.

(2) This subdivision establishes alternative provisions for nonmunicipal solid waste landfills. The requirements of subdivision (1) need not be met if the proposed site meets the following criteria:

- (A) Existence of a minimum fifty (50) foot barrier of material having an equivalent hydraulic conductivity no greater than 1×10^{-6} centimeters per second between any locally useful aquifer and the solid waste.
- (B) Demonstration that the ground water standard specified in 329 IAC 10-29 must not be exceeded in any locally useful aquifer or surface waters, except on-site retention ponds, without leachate collection. Consideration must be given to the following:
 - (i) Concentration and total amount of contaminants generated.
 - (ii) Specific geologic characteristics of the site, including secondary porosity features occurring in soil or rock, and cation exchange.
 - (iii) Ground water flow direction and predicted mechanisms of contaminant attenuation.
- (C) Notwithstanding clauses (A) through (B), other alternative technologies for the design of a nonmunicipal solid waste landfill may be considered by the commissioner provided the alternative is demonstrated to provide at least the equivalent protection to human health and the environment as the standard in subdivision (1).

(Solid Waste Management Board; 329 IAC 10-26-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1893; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-26-3 Height increases for existing nonmunicipal solid waste landfills; limits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. On and after the effective date of this article, the increased height beyond that which has previously been approved for existing nonmunicipal solid waste landfills must meet the following requirements:

- (1) Be separated from any locally useful aquifer by material that:
 - (A) has an equivalent hydraulic conductivity through the barrier of less than or equal to 1×10^{-6} centimeters per second; and
 - (B) provides a cation exchange capacity (CEC) of at least two thousand three hundred (2,300) milliequivalents per square foot for recompacted soil or two thousand eight hundred (2,800) milliequivalents for natural soil for every vertical foot of solid waste in the site.
- (2) For aquifers that are not locally useful beneath a site, the required CEC may be decreased by one-half (½) from that specified in subdivision (1).
- (3) To the extent that a leachate collection system is designed and will be operated to remove a fraction of the leachate from a site, the barrier thickness calculated under subdivision (1) or (2) may be reduced in proportion to that fraction, except as provided in subdivision (5).

(4) In cases where an aquifer will exist horizontally adjacent to waste deposition, the required barrier thickness may be decreased from that specified in subdivisions (1) through (2) or subdivision (3) depending upon the projected leachate migration through the barrier.

(5) Notwithstanding any of the calculations in subdivisions (1) through (3) or subdivision (4), a minimum subsurface barrier adjacent to the waste or leachate collection system must be soil with an equivalent hydraulic conductivity through the barrier of less than or equal to 1×10^{-6} centimeters per second and a thickness of ten (10) feet over locally useful aquifers and five (5) feet in all other cases.

(Solid Waste Management Board; 329 IAC 10-26-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1894; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 27. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Operation Approval and Preoperational Requirements

329 IAC 10-27-1 Operation approval

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A newly constructed restricted waste site Type I or Type II or nonmunicipal solid waste landfill that holds a valid permit under this article must not accept solid waste until it has complied with the applicable preoperational requirements of this rule.

(b) The owner or operator of the restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall notify the commissioner in writing when all the preoperational requirements have been completed. Unless the commissioner denies operational approval within twenty-one (21) days of receipt of such notice, the facility may begin to accept solid waste in accordance with its permit and 329 IAC 10-28. *(Solid Waste Management Board; 329 IAC 10-27-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1895; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-27-2 Preoperational requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Before beginning operation, owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall be required to do the following:

(1) Establish a series of identifiable boundary markers that will delineate the approved facility boundaries and solid waste boundaries for the life of the facility.

(2) Complete initial site development and construction in accordance with the initial facility development plan required in 329 IAC 10-24 and complete other preoperational requirements imposed as conditions to the facility permit.

(3) Establish permanent, on-site benchmark or benchmarks with vertical, mean sea level elevation, and horizontal control so that no portion of the proposed fill area is further than one thousand (1,000) feet from a benchmark. However, distances greater than the specified one thousand (1,000) feet may be allowed where necessary to avoid the placement of benchmarks on filled areas.

(4) Install any required ground water monitoring devices in accordance with 329 IAC 10-29.

(Solid Waste Management Board; 329 IAC 10-27-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1895; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 28. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Operational Requirements

329 IAC 10-28-1 Access control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) Restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must be accessible by means of established roadways only.

(b) Solid waste must be deposited at the solid waste land disposal facility only when operating personnel are on duty. Containers may be placed outside the facility entrance so that solid waste may be deposited after hours. Restricted waste sites Type I and Type II that dispose of waste on-site where the waste is generated or off-site at a location that is owned and operated by the generator for its exclusive use are exempt from this subsection. *(Solid Waste Management Board; 329 IAC 10-28-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1895; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-28-2 On-site roads

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) On-site roads that provide access to disposal areas must be passable to vehicles utilizing these areas.

(b) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall construct and maintain on-site roads in such a way as to minimize the tracking of mud or soil material from the facility onto public highways or provide and maintain equipment to remove any such mud or soil material that is tracked onto the public highways.

(c) Access to monitoring wells for vehicles driven by department representatives must be provided. Such areas must be passable. Gravel or other materials must be provided as needed to provide trafficability. Vegetation must be controlled on the access way and around the wells. (*Solid Waste Management Board; 329 IAC 10-28-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1895; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-3 Signs

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) For all restricted waste sites Type I and Type II and nonmunicipal solid waste landfills, except facilities disposing of waste generated on-site, a sign of at least sixteen (16) square feet must be erected at each facility entrance. The sign must identify the following:

- (1) The facility name.
- (2) The operating schedule.
- (3) The type of facility.
- (4) The solid waste facility permit number.

(b) For nonmunicipal solid waste landfills, traffic signs or other devices, as needed, must be provided to promote an orderly traffic pattern to and from the solid waste discharge area. (*Solid Waste Management Board; 329 IAC 10-28-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1895; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-4 Sanitation

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 15-2.1-16; IC 36-9-30

Sec. 4. (a) Cattle, hogs, poultry, or other livestock are prohibited from any filled area that has not received final cover and vegetation.

(b) Vectors, dust, and odors must be controlled by effective means so that they do not constitute or contribute to a nuisance or a health hazard.

(c) Windblown materials and litter must be collected and buried daily. Windblown materials must be controlled by effective means so that they do not constitute or contribute to a nuisance.

(d) Disposal of dead animals must be accomplished in accordance with IC 15-2.1-16.

(e) Containers that have been placed outside the facility entrance for the disposal of solid waste after hours must be emptied at a frequency that will minimize odors and control vectors, but in no event, less than once in every twenty-four (24) hours. Areas around the containers must be maintained in a sanitary and litter-free condition. (*Solid Waste Management Board; 329 IAC 10-28-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1896; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-5 Scavenging

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. Scavenging is prohibited. (*Solid Waste Management Board; 329 IAC 10-28-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1896; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-6 Salvaging

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) Salvaging on-site at a restricted waste site Type I or Type II or nonmunicipal solid waste landfill must be done only under the supervision of the owner or operator and must not interfere with the facility operations.

(b) Salvaged materials must be stored in buildings or transportable containers while awaiting removal from the facility. Alternative methods of storing salvaged materials must have prior approval from the commissioner. Approval may be granted at the request of the owner or operator if the owner or operator can demonstrate that the alternative method will provide a comparable level of environmental protection. (*Solid Waste Management Board; 329 IAC 10-28-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1896; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-7 Safety requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 7. (a) Safety devices, including roll bars and fire extinguishers, must be provided on all rolling equipment.
(b) A first aid kit must be available on-site for nonmunicipal solid waste landfills.
(c) A telephone or radio communication system must be provided on-site for nonmunicipal solid waste landfills.
(d) A nonmunicipal solid waste landfill that operates within ten thousand (10,000) feet (three thousand forty-eight (3,048) meters) of any airport runway used by turbojet aircraft or within five thousand (5,000) feet (one thousand five hundred twenty-four (1,524) meters) of any airport runway used by only piston-type aircraft must not pose a bird hazard to aircraft. (*Solid Waste Management Board; 329 IAC 10-28-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1896; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-8 Records and reports

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 24-6; IC 36-9-30

Sec. 8. (a) Restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must maintain on-site an up-to-date copy of the plans and specifications approved by the commissioner in granting the permit.
(b) Restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must maintain on-site a plot plan of the solid waste land disposal facility. The plot plan must be updated quarterly. The plot plan must describe the following:
(1) Areas of excavation.
(2) Areas of current filling.
(3) Areas under intermediate cover.
(4) Filled areas lacking final cover.
(5) Finished areas with final cover contoured and seeded.
(c) The following must be furnished upon request and be made available during normal operating hours for inspection, by any officer, employee, or representative of the department:
(1) All solid waste land disposal facility records, reports, and plans required by this section.
(2) The current waste classification documentation required under 329 IAC 10-9-4 or 329 IAC 10-9-5.
(*Solid Waste Management Board; 329 IAC 10-28-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1896; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-9 Open burning

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 9. Open burning of solid waste is prohibited at restricted waste sites Type I and Type II and nonmunicipal solid waste landfills. Burning of solid waste must take place only in an incinerator permitted under 329 IAC 11 and operating in compliance with all applicable air pollution control requirements. (*Solid Waste Management Board; 329 IAC 10-28-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1896; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-10 Diversion of surface water

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 10. (a) Restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must not deposit solid waste in standing or ponded water except for that water resulting from precipitation directly upon the working face.
(b) Nonmunicipal solid waste landfills must divert surface water from the active fill area and must minimize surface water contact with solid waste or interference with the daily operation.
(c) Nonmunicipal solid waste landfills must provide and maintain sedimentation control systems and erosion control systems

wherever necessary to minimize erosion and sedimentation of surface waters. Any permanent surface water diversion structures must be able to accommodate the twenty-five (25) year precipitation event. *(Solid Waste Management Board; 329 IAC 10-28-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1897; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-28-11 Cover; general provisions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 11. (a) Cover for restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must be soil of Unified Soil Classification ML, CL, MH, CH, or OH, or other suitable material approved by the commissioner to provide an adequate level of environmental protection.

(b) Cover must be applied and maintained at restricted waste sites Type I and Type II and nonmunicipal solid waste landfills in accordance with the applicable requirements of this rule and 329 IAC 10-30-2 or 329 IAC 10-30-3. Other provisions for cover may be approved by the commissioner if it can be demonstrated that an alternate cover or site design will provide an adequate level of environmental protection. *(Solid Waste Management Board; 329 IAC 10-28-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1897; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-28-12 Cover; restricted waste sites Type I and Type II and nonmunicipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 12. (a) Restricted waste site Type I and nonmunicipal solid waste landfills must complete the following:

- (1) Limit the size of the working face to an area that can be covered daily.
- (2) Apply and compact no less than six (6) inches of cover over all exposed solid waste:
 - (A) by the end of each operating day, regardless of weather conditions;
 - (B) in the case of a facility that is open continuously, at least once in every twenty-four (24) hour period; or
 - (C) as specified in the permit.
- (3) Apply and compact intermediate cover of not less than one (1) foot over any point in the fill that has not received solid waste for ninety (90) days or more.

(b) Restricted waste site Type II must apply and compact no less than six (6) inches of cover over all exposed solid waste regardless of weather conditions:

- (1) monthly; or
- (2) annually;

if the solid waste can be demonstrated to the satisfaction of the commissioner to have an in-place permeability of less than 1×10^{-6} centimeters per second. *(Solid Waste Management Board; 329 IAC 10-28-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1897; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-28-13 Dispersal control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 13. (a) Notwithstanding the cover requirements of this rule and 329 IAC 10-30-3 for restricted waste site Type II, if the facility operation is found to be in violation of fugitive dust regulations of the air pollution control board or if the commissioner documents evidence of visible waste deposits carried by wind or surface water beyond the site property boundary, restricted waste site Type II must complete the following:

- (1) Apply daily cover.
- (2) Submit a plan to control dispersal.

(b) Application of daily cover must continue until a dispersal control plan is approved by the commissioner. *(Solid Waste Management Board; 329 IAC 10-28-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1897; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-28-14 Grading and soil stabilization

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 14. (a) Cover material applied as required in sections 11 through 13 of this rule and 329 IAC 10-30-2 or 329 IAC 10-30-3 must be continuously maintained, including application and compaction of additional cover as needed to maintain required depth.

(b) A grass or ground cover crop must be established and maintained continuously as soon as weather permits and seasonal conditions are suitable, on any portion of the restricted waste site Type I or Type II or nonmunicipal solid waste landfill that has received final cover, except where other provisions for land use have been approved by the commissioner.

(c) Restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must be graded to promote surface water drainage and to prevent the ponding of water on previously filled areas.

(d) Vegetation must be cleared only as necessary. (*Solid Waste Management Board; 329 IAC 10-28-14; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1897; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-15 Surface leachate control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 15. (a) Any leachate on the surface of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must be immediately managed or controlled to prevent off-site migration.

(b) Any surface movement of leachate past a point fifty (50) feet outside of the solid waste boundary is prohibited except as specified in the facility permit. (*Solid Waste Management Board; 329 IAC 10-28-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-16 Leachate disposal

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. Any discharge or disposal of collected leachate must be in accordance with applicable local, state, and federal laws and rules. (*Solid Waste Management Board; 329 IAC 10-28-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-17 Ground water monitoring wells

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 17. Restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must have ground water monitoring devices in accordance with 329 IAC 10-29. (*Solid Waste Management Board; 329 IAC 10-28-17; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-18 Waste deposit and compaction

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 18. (a) Nonmunicipal solid waste landfills must spread and compact solid waste at the working face in shallow layers not exceeding two (2) feet in thickness.

(b) Compaction must:

(1) occur on a sloped working face; and

(2) be accomplished with repeated passes of appropriate equipment.

(c) Neither the slope of the working face nor intermediate slopes of compacted material must exceed 3:1, run over rise. (*Solid Waste Management Board; 329 IAC 10-28-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-19 Explosive gases

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 19. (a) Nonmunicipal solid waste landfills must ensure that:

(1) the concentration of methane generated by the facility does not exceed twenty-five percent (25%) of the lower explosive limit for the gases in facility structures, excluding gas control or recovery system components; and

(2) the concentration of methane gas does not exceed the lower explosive limit for the gases at the facility property boundary.

(b) Nonmunicipal solid waste landfills must implement a methane monitoring program approved by the commissioner to ensure that the standards in subsection (a) are met. The type and frequency of monitoring must be determined based on soil conditions,

hydrogeologic conditions, and the location of structures and property boundaries.

(c) If methane gas levels exceed the limits in subsection (a), the permittee must:

- (1) within twenty-four (24) hours notify the commissioner; and
- (2) immediately implement all necessary steps to ensure protection of human health.

(Solid Waste Management Board; 329 IAC 10-28-19; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-28-20 Leachate collection

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 20. Leachate collection systems must be operated in such a manner as to comply with the design standards and plans specified in 329 IAC 10-26-2(1)(A) and 329 IAC 10-26-1(b) if applicable. *(Solid Waste Management Board; 329 IAC 10-28-20; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-28-21 Facility responsibility for special waste disposal

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 21. (a) Under 329 IAC 10-8.1, the owner or operator of a nonmunicipal solid waste landfill shall check each load of special waste with:

- (1) the disposal notification;
- (2) the special waste certification; and
- (3) where applicable, the site-specific approvals.

(b) The owner or operator of a nonmunicipal solid waste landfill shall:

- (1) accept special waste only in accordance with 329 IAC 10-8.1; and
- (2) follow all conditions set forth in the certifications.

(c) Facilities that receive special waste must maintain all certifications, notifications, and approvals for disposal of special waste until certification of post-closure is deemed acceptable.

(d) Facilities that receive special waste must submit quarterly reports on or before the twentieth day of the month following the end of the quarter to the commissioner that must contain the following:

- (1) A compilation of all special waste accepted at the facility during the reporting period on forms provided by the commissioner or on forms as otherwise approved by the commissioner.
- (2) A letter that identifies the facility and the reporting period.

(Solid Waste Management Board; 329 IAC 10-28-21; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1898; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1728, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-28-22 Prohibition on accepting municipal waste by a nonmunicipal solid waste landfill

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 22. (a) Prior to accepting a shipment of municipal waste from a transfer station located inside or outside of Indiana, a nonmunicipal solid waste landfill must receive a copy of the manifest and must review the manifest to determine whether the items listed under 329 IAC 11-15-3 are included on the manifest.

(b) A nonmunicipal solid waste landfill must not knowingly accept a shipment of municipal waste from a transfer station located inside or outside of Indiana if:

- (1) the municipal waste is not accompanied by a manifest that contains the information required under 329 IAC 11-15-3; or
- (2) the nonmunicipal solid waste landfill has received notice from the department that the commissioner has issued an order under IC 13-20-6-3 or IC 13-20-6-4 that suspends the waste transfer activities within Indiana of the transfer station or operator that is listed on the manifest accompanying the shipment of municipal waste.

(c) Subsection (b)(2) does not apply unless the department has sent a notice by certified mail, return receipt requested, to the nonmunicipal solid waste landfill that the commissioner has suspended the waste transfer activities of the transfer station or operator listed on the manifest. The notice must contain the following:

- (1) The name of the operator or transfer station subject to the commissioner's order to suspend waste transfer activities.
- (2) The date on which the waste transfer activities are suspended under the commissioner's order.
- (3) The acknowledgement number issued to the operator under IC 13-20-6 if applicable.

(4) The location of the transfer station if the order applies to a transfer station.

(d) Subsection (b)(2) does not apply after the department has notified a suspended transfer station or operator that they may resume waste transfer activities in Indiana. The notice to the formerly suspended transfer station or operator must contain the date in which waste transfer activities may resume. A copy of this notice must be sent by the department, via certified mail, return receipt requested, to each nonmunicipal solid waste landfill that was sent the applicable notice under subsection (c). (*Solid Waste Management Board; 329 IAC 10-28-22; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1899; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-23 Violations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 23. (a) A nonmunicipal solid waste landfill that knowingly accepts a shipment of municipal waste in contravention to section 22(b) of this rule violates this rule.

(b) Acceptance of a shipment of municipal waste is not a violation of this rule if:

(1) the nonmunicipal solid waste landfill did not receive a notice under section 22(c) of this rule that the department has suspended the waste transfer activities of a transfer station or operator listed on the manifest; or

(2) the nonmunicipal solid waste landfill did not receive a notice under section 22(d) of this rule that the department has allowed the waste transfer activities of a transfer station or operator listed on the manifest to resume.

(*Solid Waste Management Board; 329 IAC 10-28-23; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1899; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-28-24 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 16-41-16-4; IC 36-1-2-23; IC 36-9-30

Sec. 24. As used in sections 22 and 23 of this rule, the following definitions apply:

(1) "Manifest" means the form used for identifying the quantity, origin, operators involved in a shipment, and the destination of municipal solid waste during its transportation.

(2) "Municipal waste" refers to any garbage, refuse, industrial lunchroom or office waste, and other material resulting from the operation of residential, municipal, commercial, or institutional establishments, and from community activities. The term does not include the following:

(A) Special waste as defined in 329 IAC 10-2-179.

(B) Hazardous waste regulated under IC 13-22 or under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. 6901 et seq. in effect on January 1, 1990.

(C) Infectious waste as defined in 329 IAC 10-2-96.

(D) Waste that results from the combustion of coal and is referred to in IC 13-19-3-3.

(E) Materials that are being transported to a facility for reprocessing or reuse. As used in this subdivision, "reprocessing or reuse" does not include:

(i) incineration; or

(ii) placement in a landfill.

(3) "Operator" refers to a corporation, a partnership, a business association, a unit (as defined in IC 36-1-2-23), or an individual who is a sole proprietor that is one (1) of the following:

(A) A broker.

(B) A person who manages the activities of a transfer station that receives municipal waste.

(C) A transporter.

(4) "Waste transfer activities" refers to the participation by a:

(A) broker or transporter who is a resident of Indiana or not a resident of Indiana; or

(B) transfer station that receives municipal waste located inside Indiana or outside Indiana in the collection or transportation of municipal waste for disposal or incineration in Indiana.

(*Solid Waste Management Board; 329 IAC 10-28-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1899; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 29. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Ground Water Monitoring and Corrective Action

329 IAC 10-29-1 Monitoring devices

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) All new restricted waste sites Type I and Type II and nonmunicipal solid waste landfills must have ground water monitoring devices. All existing nonmunicipal solid waste landfills in operation on the effective date of 329 IAC 2, which was repealed in 1996, that do not have ground water monitoring devices must install such devices on or before September 1, 1989.

(b) The number and location of monitoring devices are as follows:

(1) The following for new facilities:

(A) The ground water monitoring system must consist of a sufficient number of monitoring devices, installed at appropriate locations and depths, to yield ground water samples from the aquifer or aquifers that represent the quality of both background water that has not been affected by leachate from a facility and the quality of ground water passing the monitoring boundary of the facility. If the aquifer to be monitored exceeds the depth specified in 329 IAC 10-24-3(1)(C), the commissioner may allow alternative placement of monitoring devices.

(B) The number, spacing, and depths of monitoring devices must be proposed by the applicant in the site-specific geological study required under 329 IAC 10-24.

(C) A minimum of four (4) ground water monitoring devices, one (1) upgradient and three (3) downgradient, must be installed.

(2) For existing facilities under subsection (a), as follows:

(A) A minimum of four (4) ground water monitoring devices, one (1) upgradient and three (3) downgradient, must be installed at facilities that do not have an existing ground water monitoring system that meets the requirements of the commissioner.

(B) Locations and installation of monitoring devices must be in accordance with a plan submitted to and approved by the commissioner.

(c) The commissioner may request notification in advance of the date and time of the installation of the monitoring devices.

(d) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall prepare and submit to the commissioner at least annually a ground water flow map or maps as necessary to indicate seasonal ground water. If data acquired during operation of the facility indicates that ground water flow directions are other than as anticipated in the ground water monitoring system design, the commissioner may require additional monitoring wells at the facility.

(e) If for any reason a monitoring well or other monitoring device is destroyed or otherwise fails to properly function, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall notify the commissioner within ten (10) days of discovery. The device must be repaired if possible. If the device cannot be repaired, it must be properly abandoned and replaced within sixty (60) days of the notification unless the owner or operator is notified otherwise in writing by the commissioner.

(f) As used in this rule, "monitoring devices" includes the following:

(1) Ground water monitoring wells.

(2) Suction lysimeters.

(3) Moisture probes.

(4) Similar monitoring devices.

(g) As used in this rule, "monitoring boundary of the facility" means the vertical plane provided by the monitoring devices hydraulically downgradient from the facility. The downgradient monitoring devices that constitute the monitoring boundary of the facility must be located within fifty (50) feet of the solid waste boundary or the property line, whichever is closer to the solid waste boundary, except where fifty (50) feet is not possible because of site topography or geology. In the case of existing facilities that have ground water monitoring devices approved by the commissioner prior to the effective date of this article, those approved devices must define the monitoring boundary of the facility. (*Solid Waste Management Board; 329 IAC 10-29-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1900; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-29-2 Sampling procedures

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall develop and follow a written ground water monitoring plan. The ground water monitoring plan must include consistent sampling and analysis procedures to assure that monitoring results will provide a reliable indication of ground water quality in the zone being monitored. The plan must describe procedures and techniques utilized to comply with subsections (b) through (e). A copy of the ground water monitoring plan must be kept on-site.

(b) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall utilize

procedures and techniques to ensure that collected samples are representative of the zone being monitored and that cross-contamination of samples from other monitoring devices or from other samples is prevented.

(c) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall establish a quality assurance program that provides quantitative detection limits and the degree of error for analysis of each chemical constituent.

(d) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall establish a sample preservation and shipment procedure that maintains the reliability of the sample collected for analysis.

(e) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall institute a chain of custody procedure to prevent tampering and contamination of the collected samples prior to completion of analysis.

(f) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall take water level measurements and sample monitoring devices for the monitoring parameters specified in section 6(b) of this rule or the constituents specified in section 7 of this rule on a semiannual basis as specified by the commissioner.

(g) The results of all water elevation measurements and sampling, including copies of original laboratory certified copies of analyses, must be reported to the commissioner within sixty (60) days of sampling.

(h) The following background quality at existing units may be based on sampling of devices that are not upgradient from the waste management area where:

(1) Hydrogeologic conditions do not allow the permittee to determine what devices are upgradient.

(2) Sampling at other devices will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient devices.

(Solid Waste Management Board; 329 IAC 10-29-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1901; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-29-3 Duration of monitoring program

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. Once established at a restricted waste site Type I or Type II or nonmunicipal solid waste landfill, ground water monitoring must be conducted throughout the active life and the post-closure care period of the facility as provided under 329 IAC 10-31. *(Solid Waste Management Board; 329 IAC 10-29-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1901; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-29-4 Preoperational conditions relating to ground water monitoring

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Unless the commissioner denies operational approval under 329 IAC 10-27-1, any newly constructed restricted waste site Type I or Type II or nonmunicipal solid waste landfill holding a valid permit under this article may begin accepting solid waste twenty-one (21) days after it has notified the commissioner in writing that the following have been accomplished:

(1) Installation of any required water quality monitoring devices.

(2) Submission to the commissioner of a plot plan indicating location, mean sea level elevation, and numbering system of all water quality monitoring devices.

(3) Submission to the commissioner of a copy of well logs, including construction details.

(4) Submission to the commissioner of results of the first round of water level measurements and water sampling analyses to determine background water quality in accordance with the monitoring parameters in section 6(b) or 6(c) of this rule, the secondary standards in section 7(c) of this rule, and the constituents in section 10 of this rule. A minimum of four (4) samples taken from each upgradient monitoring device, one (1) every three (3) months for a one (1) year period, must be used to determine initial background water quality.

(b) All existing solid waste land disposal facilities required to have ground water monitoring must comply with the requirement of subsection (a)(4) upon institution of their ground water monitoring program under this rule and with submission of their first regular sampling under section 2(f) of this rule. *(Solid Waste Management Board; 329 IAC 10-29-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1901; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-29-5 Determining increases over background

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall determine whether there is a statistically significant increase over background values for each constituent required in the particular ground water

monitoring program that applies to the facility. The owner or operator shall make these statistical determinations each time the owner or operator monitors ground water quality at the monitoring boundary as follows:

- (1) In determining whether a statistically significant increase has occurred, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall compare the ground water quality at each monitoring device at the monitoring boundary for each constituent to the background value for that constituent according to the statistical procedures specified under subdivision (3).
- (2) The owner or operator shall determine whether there has been a statistically significant increase at each monitoring device at the monitoring boundary within sixty (60) days after completion of sampling.
- (3) The most scientifically valid of the following statistical procedures that will provide a ninety-five percent (95%) level of confidence must be utilized when determining if a change in the concentration of a constituent has occurred or if ground water quality standards have been exceeded:
 - (A) Mann-Whitney U-test.
 - (B) Student's T-test.
 - (C) Temporal or spatial trend analysis.
 - (D) Any other valid statistical analysis that is appropriate for the distribution of the data being considered and that provides a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

(Solid Waste Management Board; 329 IAC 10-29-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1902; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-29-6 Phase I monitoring program

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) Phase I monitoring is required at all restricted waste sites Type I and Type II and nonmunicipal solid waste landfills except as otherwise provided in sections 7 and 9 of this rule.

- (b) A Phase I monitoring program for nonmunicipal solid waste landfills must include the following monitoring parameters:
- (1) Field pH.
 - (2) Specific conductance.
 - (3) Chloride.
 - (4) Boron.
 - (5) Ammonia.
 - (6) Sodium.
 - (7) Chemical oxygen demand.
 - (8) Total phenolics.
 - (9) Methylene chloride.
 - (10) 1,1-dichloroethane.
 - (11) Toluene.
 - (12) Benzene.
 - (13) 1,2-dichloroethene, total.
 - (14) Ethyl benzene.
 - (15) 2-butanone, methyl ethyl ketone.

(c) Appropriate monitoring parameters for restricted waste sites Type I and Type II must be determined by the commissioner based on the constituents of the waste permitted to be accepted at the site.

(d) If the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill determines, under section 5 of this rule, that there is a statistically significant increase over background for two (2) or more of the parameters under subsection (b) or (c) at any monitoring device at the monitoring boundary, the owner or operator shall do the following:

- (1) Notify the commissioner within fourteen (14) days of this finding. The notification must indicate what Phase I parameters have shown statistically significant increases over background levels.
- (2) Within sixty (60) days:
 - (A) sample the ground water in all monitoring devices;
 - (B) determine the concentration of all constituents identified in section 7(b) through 7(c) of this rule or section 7(d) of this rule; and
 - (C) report the results to the commissioner.
- (3) Within a reasonable time period, to be established by the commissioner, establish a Phase II detection monitoring program meeting the requirements of section 7 of this rule.

(Solid Waste Management Board; 329 IAC 10-29-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1902; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

p.m.: 24 IR 1535)

329 IAC 10-29-7 Phase II monitoring program

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. (a) Phase II monitoring is required whenever statistically significant increases over background have been detected between background and downgradient monitoring devices for two (2) or more of the Phase I parameters under section 6 of this rule, and must continue until sampling results over a one (1) year period do not show a statistically significant increase in the constituents to be monitored under subsection (b) or (d).

(b) A Phase II monitoring program for nonmunicipal solid waste landfills must include the constituents that comprise the ground water protection standard set out in section 10(a) of this rule.

(c) The Phase II monitoring program for nonmunicipal solid waste landfills must also include monitoring of the following secondary standards:

- (1) Chloride.
- (2) Copper.
- (3) Iron.
- (4) Manganese.
- (5) Sulfate.
- (6) Total dissolved solids.
- (7) Zinc.

(d) Appropriate monitoring constituents for restricted waste sites Type I and Type II must be determined by the commissioner based on the constituents of the waste permitted to be accepted at the site.

(e) If the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill determines, under section 5 of this rule, that there is a statistically significant increase for constituents specified in subsection (b) or (d) at any monitoring device at the monitoring boundary, the owner or operator shall do the following:

(1) Notify the commissioner of this finding in writing within fourteen (14) days. The notification must indicate what constituents have shown statistically significant increases over background levels.

(2) Within one hundred eighty (180) days, submit to the commissioner a plan for a corrective action program designed to meet the requirements of section 9 of this rule unless none of the increases over background of constituents identified under this subsection results in an exceedance of the ground water protection standard under section 10 of this rule.

(f) If the permittee determines that the level of concentration of any of the secondary standards at any monitoring device at the monitoring boundary has reached or exceeded the greater of two (2) times the background level or two (2) times the secondary maximum contaminant level established by 40 CFR 143.3, the permittee shall notify the commissioner of this finding within fourteen (14) days, specifying the secondary standards that have reached this level. (*Solid Waste Management Board; 329 IAC 10-29-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1903; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-29-8 Increase not attributable to landfill

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 8. If the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill determines, under section 6(d), 7(e), or 7(f) of this rule, that there is a statistically significant increase of the specified constituents at any monitoring device at the solid waste boundary, the owner or operator may demonstrate that a source other than the solid waste facility caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. The owner or operator may make a demonstration under this section in lieu of submitting the information under section 6(d)(2), 7(e)(2), or 7(f) of this rule, only if the demonstration made under this section successfully shows that a source other than the solid waste facility caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this section, the owner or operator shall do the following:

(1) Notify the commissioner in writing, within seven (7) days of determining a statistically significant increase at the monitoring boundary, that the owner or operator intends to make a demonstration under this section.

(2) Within ninety (90) days, submit a report to the commissioner demonstrating that a source other than the solid waste facility caused the increase or that the increase resulted from error in sampling, analysis, or evaluation.

(3) Continue to monitor in accordance with the Phase I monitoring program established under section 6 of this rule or the Phase II monitoring program established under section 7 of this rule as appropriate.

(*Solid Waste Management Board; 329 IAC 10-29-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1903; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-29-9 Corrective action program

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 9. (a) A corrective action program is required whenever the ground water protection standard under section 10 of this rule is exceeded, and may be required at the discretion of the commissioner if any of the secondary standards under section 7(c) of this rule exceed the levels specified in section 7(f) of this rule.

(b) A corrective action monitoring program must comply with the Phase II monitoring requirements under section 7 of this rule. Additional monitoring must be implemented as determined by the commissioner to be necessary to the following:

- (1) Determine the areal extent of any plume of contamination for each constituent under section 10 of this rule that has been measured at concentrations that exceed background levels.
- (2) Demonstrate the effectiveness of the corrective action program.

This additional monitoring may include a requirement that the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill sample public or private water supply wells identified by the commissioner to determine the extent of ground water contamination unless permission cannot be obtained from the well owner.

(c) With the approval of the commissioner, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall immediately implement a corrective action program to include the following:

- (1) Prevent further migration of all constituents that exceed the ground water protection standard established under section 10 of this rule.
- (2) Minimize any increase in the concentrations of all constituents specified in the ground water protection standard established under section 10 of this rule at the existing monitoring boundary.
- (3) Notify all persons who own the land or reside on the land that directly overlies any part of the plume defined in subsection (b)(1).
- (4) Replace any currently used sources of ground water that lie within any part of the plume defined in subsection (b)(1) with water from an alternate source that has been approved by the commissioner. The amount of water supplied from an alternate water source under this subdivision must be equal to the usage rates of the replaced ground water source.
- (5) Take any other steps deemed necessary by the commissioner to ensure protection of human health and the environment.

(d) If the commissioner determines that restoration of the ground water protection standard at or beyond the monitoring boundary is necessary to eliminate any threat to human health or the environment, the commissioner may require the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill to design and implement a corrective action program to achieve the concentration limits in the ground water protection standard by removing or treating in place any constituents under section 10 of this rule that were released by the solid waste facility and that exceed the ground water protection standard established under section 10 of this rule at or beyond the monitoring boundary. Corrective action programs under this subsection must be initiated and completed within a reasonable period of time as determined by the commissioner. When the ground water protection standard has been achieved, the commissioner may determine appropriate monitoring requirements on a site-specific basis to demonstrate the continued effectiveness of the corrective action program. *(Solid Waste Management Board; 329 IAC 10-29-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1904; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-29-10 Ground water quality standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 10. (a) The constituents that comprise the ground water protection standard for the purposes of this rule are as follows:

- (1) The following inorganics:
 - (A) Arsenic.
 - (B) Barium.
 - (C) Cadmium.
 - (D) Chromium.
 - (E) Fluoride.
 - (F) Lead.
 - (G) Mercury.
 - (H) Nitrate (as nitrogen).
 - (I) Selenium.
 - (J) Silver.
- (2) The following volatile organic compounds:
 - (A) Acetone.
 - (B) Acrolein.

- (C) Acrylonitrile.
- (D) Benzene.
- (E) Bromodichloromethane.
- (F) Bromoform.
- (G) Bromomethane.
- (H) 2-butanone (methyl ethyl ketone).
- (I) Carbon disulfide.
- (J) Carbon tetrachloride.
- (K) Chlorobenzene.
- (L) Chlorodibromomethane.
- (M) Chloroethane.
- (N) 2-chloroethyl vinyl ether.
- (O) Chloroform.
- (P) Chloromethane.
- (Q) Dibromomethane.
- (R) Dichlorodifluoromethane.
- (S) 1,1-dichloroethane.
- (T) 1,2-dichloroethane.
- (U) 1,2-dichloroethene (total).
- (V) cis-1,3-dichloropropene.
- (W) trans-1,3-dichloropropene.
- (X) Ethylbenzene.
- (Y) Ethyl methacrylate.
- (Z) 2-hexanone.
- (AA) Iodomethane.
- (BB) Methylene chloride.
- (CC) 4-methyl-2-pentanone.
- (DD) Styrene.
- (EE) 1,1,2,2-tetrachloroethane.
- (FF) Toluene.
- (GG) 1,1,1-trichloroethane.
- (HH) 1,1,2-trichloroethane.
- (II) Trichloroethene.
- (JJ) Trichlorofluoromethane.
- (KK) 1,2,3-trichloropropane.
- (LL) Vinyl acetate.
- (MM) Vinyl chloride.
- (NN) Xylenes (total).

(b) The concentrations of the constituents listed in subsection (a) must not exceed current background concentrations or the maximum contamination level (MCL) established for the constituent, whichever is the higher concentration. If an MCL has not been established, then the concentration limit is the background concentration of ground water at the facility. When background is the standard, statistically significant exceedances must be determined as provided in section 5 of this rule.

(c) As used in this section, "maximum contamination level" or "MCL" is defined under 329 IAC 10-2-110. (*Solid Waste Management Board; 329 IAC 10-29-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1904; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 30. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Closure Requirements

329 IAC 10-30-1 Performance standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. Owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall close the facilities in a manner that:

- (1) minimizes the need for further maintenance;
- (2) controls post-closure escape of waste, waste constituents, leachate, contaminated precipitation, or waste decomposition products to the ground or surface waters or the atmosphere; and

(3) at a minimum, is in compliance with applicable closure provisions and conditions imposed in the facility permit.
(Solid Waste Management Board; 329 IAC 10-30-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1905; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-30-2 Final cover; restricted waste site Type I and nonmunicipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Owners or operators of restricted waste site Type I and nonmunicipal solid waste landfills shall apply and compact final cover of not less than two (2) feet, except as more cover may be required under subsection (c), to any point in the fill:

(1) within one hundred eighty (180) days of receiving its final waste volume; or

(2) when any area of the restricted waste site Type I or nonmunicipal solid waste landfill is filled to its approved elevation.

(b) Owners or operators of restricted waste site Type I and nonmunicipal solid waste landfills shall apply six (6) inches of topsoil on top of the final cover to establish vegetation as required by 329 IAC 10-28-14.

(c) Restricted waste site Type I and nonmunicipal solid waste landfills must meet the following requirements for final cover:

(1) The maximum projected erosion rate must be five (5) tons per acre per year.

(2) The final compacted cover must have six (6) inches of topsoil plus a minimum depth of compacted clay of:

(A) two (2) feet for slopes less than or equal to fifteen percent (15%);

(B) three (3) feet for slopes greater than fifteen percent (15%) but less than twenty-five percent (25%); and

(C) four (4) feet for slopes greater than twenty-five percent (25%).

(3) The final cover must have a slope of:

(A) not less than two percent (2%) and not greater than thirty-three percent (33%) for restricted waste site Type I; and

(B) not less than four percent (4%) and not greater than thirty-three percent (33%) for nonmunicipal solid waste landfills.

(Solid Waste Management Board; 329 IAC 10-30-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1905; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-30-3 Final cover; restricted waste site Type II

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Owners or operators of a restricted waste site Type II shall apply and compact no less than two (2) feet of final cover over any area in the fill within one hundred eighty (180) days when:

(1) solid waste has not been disposed for one (1) year; or

(2) any area of the restricted waste site Type II has been filled to its approved elevation.

(b) Owners or operators of the restricted waste site Type II shall apply six (6) inches of topsoil on top of the final cover to establish vegetation as required by 329 IAC 10-28-14.

(c) The restricted waste site Type II must meet the following requirements for final cover:

(1) The maximum projected erosion rate must be five (5) tons per acre per year.

(2) The final compacted cover must be as specified in subsections (a) and (b).

(3) The final cover must have a slope of not less than two percent (2%) and not greater than thirty-three percent (33%).

(Solid Waste Management Board; 329 IAC 10-30-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1905; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-30-4 Closure plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall have a written closure plan. The closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner as part of the permit. The approved closure plan will become a condition of the permit.

(b) The closure plan must identify the steps necessary to completely close the restricted waste site Type I or Type II or nonmunicipal solid waste landfill at any point during its intended life in accordance with section 1 of this rule. The plan must be certified by a registered professional engineer. The closure plan must include the following:

(1) A description of the steps that will be used to partially close, if applicable, and finally close the facility in accordance with section 1 of this rule.

(2) A listing of labor, materials, and testing necessary to close the facility.

(3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include:

- (A) the total time required to close the facility; and
- (B) the time required for completion of intervening closure activities.
- (4) An estimate of the cost per acre of providing final cover and vegetation. Such cost must be that which is necessary for providing the following, but must not be less than five thousand dollars (\$5,000) per acre:
 - (A) Two (2) feet of compacted clay soil.
 - (B) Six (6) inches of topsoil.
 - (C) Vegetation.
 - (D) Certification of closure, including any testing necessary for such certification.
- (5) The closure plan must separately identify any closure costs for items other than providing final cover and vegetation.
- (6) The closure plan must list a closure cost estimate equal to the costs specified by subdivision (5) plus the product of the total area of the site permitted for filling and the cost per unit area specified by subdivision (4). Closure costs must be calculated based on the cost necessary for the work to be performed by a third party.
- (7) The estimate of the cost per acre of providing final cover and vegetation must be that necessary for providing the activities as specified in the closure plan; however, the sum of the closure cost estimate and post-closure cost estimate must not be less than fifteen thousand dollars (\$15,000) per acre or fraction of an acre covered by the permitted facility.
- (8) If the restricted waste site Type I or Type II or nonmunicipal solid waste landfill utilizes the closure trust fund option or funds the letter of credit on an annual basis, as contained in 329 IAC 10-39-2, then for each yearly period following the beginning of operation of the facility, the plan must specify the maximum area of the facility into which solid waste will have been deposited through that year of the facility's life and must delineate such areas on the copy of the facility's final contour map. The closure plan must list closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivision (5), plus the product of the noted maximum areas of the site and the cost per unit area specified by subdivision (4).

(Solid Waste Management Board; 329 IAC 10-30-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1906; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-30-5 Partial closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. (a) Areas of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill that have received final cover, and are graded and have established vegetation in accordance with the applicable provisions of this rule, 329 IAC 10-28, and the approved closure plan prior to closure of the facility may receive certification of partial closure.

(b) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall submit to the commissioner a certification, signed by both the owner or operator and a registered professional engineer, which specifically identifies the closed areas and indicates that the partial closure is in accordance with the approved closure plan and the standards of this article. Certifications of partial closure must not be made for an area until the final cover has been completely provided for that area and vegetation has been established. *(Solid Waste Management Board; 329 IAC 10-30-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1906; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-30-6 Initiation of final closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) Within fifteen (15) days after receiving the final volume of waste, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall initiate final closure of all areas not certified as partially closed. Final closure must be in accordance with the approved closure plan.

(b) The owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall complete other closure activities in accordance with the approved closure plan. *(Solid Waste Management Board; 329 IAC 10-30-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1907; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-30-7 Closure certification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 7. (a) As part of the final closure of a facility, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall submit to the commissioner the following:

- (1) A certification statement, signed by both the owner or operator and a registered professional engineer, that the facility has

been closed in accordance with the approved closure plan.

(2) Verification that the owner of the property on which the facility is located has recorded a notation on the deed to the facility property, or on some other instrument, normally examined during title search, which will, in perpetuity, notify any potential purchaser of the property that the land has been used as a solid waste land disposal facility. At a minimum, the recording must contain the following:

- (A) The general types and location of waste.
- (B) The depth of fill.
- (C) A plot plan, with surface contours at intervals of two (2) feet, which must indicate:
 - (i) final land surface water run-off direction;
 - (ii) surface water diversion structures after completion of the operation; and
 - (iii) final grading.
- (D) A statement that no construction, installation of wells, pipes, conduits, or septic systems, or any other excavation must be done on the property without approval by the commissioner.

(b) The final closure will be deemed adequate unless within one hundred fifty (150) days of receipt of the documentation required by subsection (a), the commissioner issues a notice of deficiency of final closure, including additional action that needs to be taken and the timetable for the necessary additional actions. (*Solid Waste Management Board; 329 IAC 10-30-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1907; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 31. Restricted Waste Sites Type I and Type II and Nonmunicipal Solid Waste Landfills; Post-Closure Requirements

329 IAC 10-31-1 Performance standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. Owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall maintain the facilities during the post-closure period in a manner that:

- (1) minimizes the need for further maintenance;
- (2) controls post-closure escape of waste, waste constituents, leachate, contaminated precipitation, or waste decomposition products to the ground or surface waters or the atmosphere; and
- (3) at a minimum, is in compliance with applicable closure provisions and conditions imposed in the facility permit.

(*Solid Waste Management Board; 329 IAC 10-31-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1907; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-31-2 Post-closure duties

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Owners or operators of the restricted waste sites Type I and Type II and nonmunicipal solid waste landfills have the following duties after closure of the facility:

- (1) Post-closure activities must be performed in accordance with the approved post-closure plan as specified in section 3 of this rule.
- (2) Inspection of the facility at least twice per year with a written report on the condition of the facility to be submitted to the commissioner.
- (3) Maintenance of the minimum thickness of final cover and vegetation as required by 329 IAC 10-28 and 329 IAC 10-30.
- (4) Maintenance of the final contours of the facility in accordance with the applicable standards of 329 IAC 10-28 and 329 IAC 10-30 and, at a minimum, to provide that no ponding of water occurs on filled areas.
- (5) Control of any vegetation on vehicular access ways to monitoring wells as required by 329 IAC 10-28-2(c).
- (6) Control of vegetation at the site as necessary to enable determination of the need for slope and cover maintenance and leachate outbreak abatement.
- (7) Maintenance of access control and benchmarks at the facility.
- (8) Maintenance and monitoring of water quality monitoring devices and, if applicable, any leachate collection and treatment systems or methane control systems.
- (9) Control of any leachate or gas generated at the facility, as required by 329 IAC 10-28-19 or 329 IAC 10-28-20.

(b) Post-closure requirements imposed by this section must be followed for a period of thirty (30) years following the date of final closure certification in accordance with 329 IAC 10-30-7. (*Solid Waste Management Board; 329 IAC 10-31-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1907; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-31-3 Post-closure plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Owners or operators of restricted waste sites Type I and Type II and nonmunicipal solid waste landfills shall have a written post-closure plan. The post-closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved if acceptable by the commissioner as part of the permit. The approved post-closure plan must become a condition of the permit. If the plan is determined to be unacceptable, the commissioner shall identify the items needed to make it complete.

(b) The post-closure plan must identify the activities that will be carried on after closure under section 2 of this rule and must include at least the following:

(1) A description of the planned ground water monitoring activities and the frequency at which they will be performed.

(2) A description of the planned maintenance activities and the frequency at which they will be performed.

(3) The name, address, and telephone number of the owner or operator with responsibility for maintaining the site after closure whom the commissioner may contact about the solid waste facility during the post-closure period.

(4) A post-closure cost estimate in accordance with 329 IAC 10-39-3. Post-closure costs must be calculated based on the cost necessary for the work to be performed by a third party. For post-closure maintenance of final cover and vegetation, the amount per acre must be ten percent (10%) of the cost calculated under 329 IAC 10-30-4(b)(4) multiplied by the total acreage of the site permitted for filling. The estimate of the post-closure cost per acre must be that which is necessary for providing the activities as specified in the post-closure plan; however, the sum of the closure cost estimate and post-closure cost estimate must not be less than fifteen thousand dollars (\$15,000) per acre or fraction of an acre covered by the permitted facility.

(Solid Waste Management Board; 329 IAC 10-31-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-31-4 Post-closure certification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. When the post-closure care requirements of this rule have been completed, the owner or operator of a restricted waste site Type I or Type II or nonmunicipal solid waste landfill shall submit a certification statement signed by both the owner or operator and a registered professional engineer states that the post-closure care requirements have been met and the facility has stabilized. The post-closure certification will be deemed adequate unless within one hundred fifty (150) days of receipt of the post-closure certification, the commissioner issues notice of the deficiency of post-closure, including actions necessary to correct the deficiency.

(Solid Waste Management Board; 329 IAC 10-31-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-31-5 Responsibility after post-closure to correct nuisance

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. Subsequent to the completion of post-closure, the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located shall be responsible for correcting and controlling any nuisance conditions occurring at the facility.

(Solid Waste Management Board; 329 IAC 10-31-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-31-6 Elimination of threats to human health or the environment after post-closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. Subsequent to the completion of post-closure, the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located shall be responsible for eliminating any threat to human health or the environment. *(Solid Waste Management Board; 329 IAC 10-31-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-31-7 Remedial action

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. The commissioner may proceed under IC 13-25-4 and rules adopted under IC 13-25-4-7 that require the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located, or any other responsible party under IC 13-25-4, to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices, if the commissioner determines that the closed facility is a threat to human health or the environment, due to a release of a hazardous substance from the facility into the environment. (*Solid Waste Management Board; 329 IAC 10-31-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1908; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 32. Restricted Waste Site Type III and Construction/Demolition Sites; Additional Application Requirements to 329 IAC 10-11

329 IAC 10-32-1 General

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) An application for a restricted waste site Type III or a construction/demolition site permit must be accompanied by the plans or documents specified in this rule.

(b) Design drawings and specifications must be certified by a registered professional engineer and must be properly titled. (*Solid Waste Management Board; 329 IAC 10-32-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-32-2 Plot plans and cross-sectional drawings

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) An application for a restricted waste site Type III or a construction/demolition site must be accompanied by plot plans using a scale of at least one (1) inch equals one hundred (100) feet for a site of less than eighty (80) acres, or a scale of at least one (1) inch equals two hundred (200) feet for a facility of eighty (80) acres or more. A bar scale must be shown on plans in order to properly indicate the scale if size changes occur. All plot plans must include the facility boundaries and indicate each of the required features set forth in this section within three hundred (300) feet of the facility boundaries. All facility plan elevations must correlate with United States Geological Survey (USGS) mean sea level data.

- (b) An application for restricted waste site Type III must be accompanied by the following plot plans and cross sections:
- (1) A plot plan that indicates the following:
 - (A) Locations and elevations of all existing and proposed on-site boring locations.
 - (B) Rock outcroppings.
 - (C) Surface water run-off direction.
 - (D) Fences.
 - (E) Utility easements and rights-of-way.
 - (F) Present land surface contours at intervals of no more than five (5) feet.
 - (G) Proposed location of scales required by 329 IAC 10-14-2.
 - (2) A plot plan that indicates the fill boundaries and proposed final contours of the site at intervals of no more than two (2) feet.
- (c) An application for a construction/demolition site must be accompanied by the following plot plans and cross sections:
- (1) A plot plan that indicates the following:
 - (A) Locations and elevations of all existing and proposed on-site boring locations.
 - (B) Rock outcroppings.
 - (C) Surface water run-off direction.
 - (D) Fences.
 - (E) Utility easements and rights-of-way.
 - (F) Present land surface contours at intervals of no more than five (5) feet.
 - (G) Proposed location of scales required by 329 IAC 10-14-2.
 - (2) A plot plan that indicates the fill boundaries and proposed final contours of the site at intervals of no more than two (2) feet.
 - (3) A plot plan, with surface contours at intervals of no more than five (5) feet, which indicates initial facility development. Compliance with this plan is a preoperational requirement under 329 IAC 10-35-2. Benchmarks as required by 329 IAC 10-35-2 must be shown with a description and elevation provided.
 - (4) A plot plan, with surface contours at intervals of no more than five (5) feet, which indicates the following:
 - (A) Land surface water diversion structures.
 - (B) Berms.

- (C) Vegetation or fences for visual screening.
- (D) Sedimentation control structures and erosion control structures.
- (E) Protective barriers.
- (F) Leachate collection and methane control systems if proposed.
- (G) Existing and proposed structures.
- (H) The precise location of the solid waste boundary.
- (I) Methods of operation.
- (J) Direction and the order operation and development will proceed.
- (K) Depth of excavation.
- (L) Length and width of trenches if proposed.
- (M) Depth of lifts and size of working face.
- (N) Areas of the site to be used only for acquisition of cover soil.

(Solid Waste Management Board; 329 IAC 10-32-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-32-3 Soils; ground water; geology information

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. An application for a restricted waste site Type III or a construction/demolition site must be accompanied by boring and testing information if well logs, soils maps, or other information does not indicate a suitable barrier between locally useful aquifers and the solid waste. *(Solid Waste Management Board; 329 IAC 10-32-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-32-4 Descriptive narrative

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. An application for a restricted waste site Type III or a construction/demolition site must be accompanied by a narrative describing the proposed facility and include the following:

- (1) Anticipated quantity, types, and sources of solid waste to be deposited.
- (2) The equipment to be used for placement and compaction of all solid waste, excavation of soil, moving of stockpiled soils, and application of cover soil.
- (3) Procedures to control fugitive dust.
- (4) Sanitary facilities if employees are at the site full time.
- (5) A statement as to the existence of and a description of any wells within six hundred (600) feet of the proposed fill area.
- (6) A description of the access control at the site.
- (7) A description of the safety equipment to be used at the site.
- (8) The distance from the site to the nearest dwelling.
- (9) A description of the location, amount, and depth of excavation that will occur at the site.
- (10) A description of the supervision that will occur at the site.
- (11) A description of the base flood at the site and whether the site is in the floodway.
- (12) Proposed hours of operation.
- (13) The names and addresses of all adjoining land owners.

(Solid Waste Management Board; 329 IAC 10-32-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 33. Restricted Waste Site Type III and Construction/Demolition Sites; Location Restrictions

329 IAC 10-33-1 Solid waste boundary limits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) On and after the effective date of this article, the solid waste boundary of a new restricted waste site Type III and the additional areas beyond that which have been previously approved for existing restricted waste site Type III must be prohibited from the following areas:

- (1) Wetlands in violation of Section 404 of the Clean Water Act as amended February 4, 1987.

- (2) The critical habitat of an endangered species as defined by 50 CFR 17.
- (3) Floodways of drainage areas greater than one (1) square mile, without the approval of the department of natural resources, and floodways without provisions to prevent washout of the waste.
- (4) Within areas of karst topography without:
 - (A) provisions to collect and contain all of the leachate generated; and
 - (B) a demonstration that the integrity of the landfill will not be damaged by subsidence.
- (5) Over mines unless it is demonstrated that the integrity of the landfill will not be damaged by subsidence.
- (6) Within six hundred (600) feet of a potable water well in use as a water supply for a dwelling or dwellings on the date of public notice for zoning approval for the permitted activity or the date of public notice of the permit application by the commissioner, whichever occurs first, unless written consent is obtained from the owner of the well.
- (7) Within fifty (50) feet of the real property boundaries of the facility.
- (b) On and after the effective date of this article, the solid waste boundary of a new construction/demolition site and the additional areas beyond that which have been previously approved for existing construction/demolition sites must be prohibited from the following areas:
 - (1) Wetlands in violation of Section 404 of the Clean Water Act as amended February 4, 1987.
 - (2) The critical habitat of an endangered species as defined by 50 CFR 17.
 - (3) Floodways of drainage areas greater than one (1) square mile, without the approval of the department of natural resources, and floodways without provisions to prevent washout of the waste.
 - (4) Within areas of karst topography without:
 - (A) provisions to collect and contain all of the leachate generated; and
 - (B) a demonstration that the integrity of the landfill will not be damaged by subsidence.
 - (5) Over mines unless it is demonstrated that the integrity of the landfill will not be damaged by subsidence.
 - (6) Within six hundred (600) feet of a potable water well in use as a water supply for a dwelling or dwellings on the date of public notice for zoning approval of the permitted activity or the date of public notice of the permit application by the commissioner, whichever occurs first, unless written consent is obtained from the owner of the well.
 - (7) Within six hundred (600) feet of any dwelling in existence on the date of public notice for zoning approval of the permitted activity or the date of public notice by the commissioner of the permit application, whichever occurs first, unless written consent has been obtained from the occupant and the owner of the dwelling.
 - (8) Within one hundred (100) feet of the normal water line of any lake, reservoir, or continuously flowing stream.
 - (9) Within the flood plain unless the waste is protected from floodwater inundation by a dike with a top elevation not less than three (3) feet above the base flood elevation.
 - (10) Within fifty (50) feet of the real property boundaries of the facility.

(Solid Waste Management Board; 329 IAC 10-33-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 34. Restricted Waste Site Type III and Construction/Demolition Sites; Liner System Design Standards

329 IAC 10-34-1 Design standards

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) On and after the effective date of this article, for a restricted waste site Type III and a construction/demolition site, the increased height and horizontal expansions of the fill area, beyond that which had been approved previously and for new facilities, must have a barrier between the solid waste and an aquifer. This barrier must:

- (1) consist of soil, whether undisturbed, constructed, or a combination thereof, with an equivalent hydraulic conductivity through the barrier of less than or equal to 1×10^{-6} centimeters per second; and
- (2) have a minimum thickness consisting of three (3) feet between the solid waste and any locally useful aquifer.

(b) Barrier thickness as specified in subsection (a) may be increased due to cation exchange capacities less than ten (10) milliequivalents per one hundred (100) grams or decreased due to lack of ground water resources in the area or alternate technology such as synthetic liners and leachate collection. *(Solid Waste Management Board; 329 IAC 10-34-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1911; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 35. Restricted Waste Site Type III and Construction/Demolition Sites; Operation Approval and Preoperational Requirements

329 IAC 10-35-1 Operation approval

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A newly constructed restricted waste site Type III or construction/demolition site that holds a valid permit under this article must not accept solid waste until it has complied with the applicable preoperational requirements of this rule.

(b) The owner or operator of the restricted waste site Type III or construction/demolition site shall notify the commissioner in writing when all the preoperational requirements have been completed. Unless the commissioner denies operational approval within twenty-one (21) days of receipt of the notice, the facility may begin to accept solid waste in accordance with its permit granted under 329 IAC 10-11 and the requirements of 329 IAC 10-36. *(Solid Waste Management Board; 329 IAC 10-35-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1911; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-35-2 Preoperational requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Before beginning operation, owners or operators of a restricted waste site Type III shall be required to establish a series of identifiable boundary markers that will delineate the approved facility boundaries and solid waste boundaries for the life of the facility.

(b) Before beginning operation, owners or operators of construction/demolition sites shall be required to complete the following:

(1) Establish a series of identifiable boundary markers that will delineate the approved facility boundaries and solid waste boundaries for the life of the facility.

(2) Complete initial site development and construction in accordance with the initial facility development plan required in 329 IAC 10-32 and complete other preoperational requirements imposed as conditions to the facility permit.

(3) Establish permanent, on-site benchmark or benchmarks with vertical, mean sea level elevation, and horizontal control so that no portion of the proposed fill area is further than one thousand (1,000) feet from a benchmark. However, distances greater than the specified one thousand (1,000) feet may be allowed where necessary to avoid the placement of benchmarks on filled areas.

(Solid Waste Management Board; 329 IAC 10-35-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1911; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 36. Restricted Waste Site Type III and Construction/Demolition Sites; Operational Requirements

329 IAC 10-36-1 Access control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A restricted waste site Type III and a construction/demolition site must be accessible by means of established roadways only.

(b) Solid waste must be deposited at the solid waste land disposal facility only when operating personnel are on duty. Containers may be placed outside the facility entrance so that solid waste may be deposited after hours.

(c) A restricted waste site Type III that disposes of waste on-site where the waste is generated or off-site at a location that is owned and operated by the generator for its exclusive use is exempt from subsection (b). *(Solid Waste Management Board; 329 IAC 10-36-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1911; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-36-2 On-site roads

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) On-site roads that provide access to disposal areas must be passable to vehicles utilizing these areas.

(b) The owner or operator of a restricted waste site Type III or a construction/demolition site shall construct and maintain on-site roads in such a way as to minimize the tracking of mud or soil material from the facility onto public highways or provide and maintain equipment to remove any such mud or soil material that is tracked onto the public highways.

(c) Access to monitoring wells for vehicles driven by department representatives must be provided. Such areas must be passable. Gravel or other materials must be provided as needed to provide trafficability. Vegetation must be controlled on the access way and around the wells. *(Solid Waste Management Board; 329 IAC 10-36-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1912; readopted*

filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-36-3 Signs

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) For all restricted waste site Type III and construction/demolition sites, except facilities disposing of waste generated on-site, a sign of at least sixteen (16) square feet must be erected at each facility entrance. The sign must identify the following:

- (1) The facility name.
- (2) The operating schedule.
- (3) The type of facility.
- (4) The solid waste facility permit number.

(b) For construction/demolition sites, traffic signs or other devices, as needed, must be provided to promote an orderly traffic pattern to and from the discharge area. (*Solid Waste Management Board; 329 IAC 10-36-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-4 Sanitation

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 15-2.1-16; IC 36-9-30

Sec. 4. (a) Cattle, hogs, poultry, or other livestock are prohibited from any filled area that has not received final cover and vegetation.

(b) Vectors, dust, and odors must be controlled by effective means so that they do not constitute or contribute to a nuisance or a health hazard.

(c) Windblown materials and litter must be collected and buried daily. Windblown materials must be controlled by effective means so that they do not constitute or contribute to a nuisance.

(d) Disposal of dead animals must occur in accordance with IC 15-2.1-16.

(e) Containers that have been placed outside the facility entrance for the disposal of solid waste after hours must be emptied at a frequency that will minimize odors and control vectors, but in no event, less than once in every twenty-four (24) hours. Areas around the containers must be maintained in a sanitary and litter-free condition. (*Solid Waste Management Board; 329 IAC 10-36-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-5 Scavenging

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. Scavenging is prohibited. (*Solid Waste Management Board; 329 IAC 10-36-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-6 Salvaging

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) Salvaging on-site at a restricted waste site Type III or a construction/demolition site must be completed only under the supervision of the owner or operator and must not interfere with the facility operations.

(b) Salvaged materials must be stored in buildings or transportable containers while awaiting removal from the facility. Alternative methods of storing salvaged materials must have prior approval from the commissioner. Approval may be granted at the request of the owner or operator, if the owner or operator can demonstrate that the alternative method will provide a comparable level of environmental protection. (*Solid Waste Management Board; 329 IAC 10-36-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-7 Safety requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 7. (a) Safety devices, including roll bars and fire extinguishers, must be provided on all rolling equipment.

(b) A first aid kit must be available on-site for a construction/demolition site.

(c) A telephone or radio communication system must be provided on-site for a construction/demolition site. (*Solid Waste Management Board; 329 IAC 10-36-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1912; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-8 Records and reports

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 8. (a) A restricted waste site Type III and a construction/demolition site must maintain on-site an up-to-date copy of the plans and specifications, approved by the commissioner, in granting the permit.

(b) A restricted waste site Type III and a construction/demolition site must maintain on-site a plot plan of the solid waste land disposal facility. The plot plan must be updated quarterly. The plot plan must describe the following:

- (1) Areas of excavation.
- (2) Areas of current filling.
- (3) Areas under intermediate cover.
- (4) Filled areas lacking final cover.
- (5) Finished areas with final cover contoured and seeded.

(c) The following must be furnished upon request and be made available during normal operating hours for inspection by any officer, employee, or representative of the department:

- (1) All solid waste land disposal facility records, reports, and plans required by this section.
- (2) The current waste classification documentation required under:
 - (A) 329 IAC 10-9-3 for construction/demolition sites; or
 - (B) 329 IAC 10-9-4 for restricted waste site Type III.

(d) Under 329 IAC 11-15, the owner or operator of a construction/demolition site to which municipal waste is transported shall retain each manifest for one (1) year and send one (1) copy of each manifest to the department within three (3) months after receiving the manifest. Each manifest must be retained at the facility and must be made available to department staff upon request. (*Solid Waste Management Board; 329 IAC 10-36-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-9 Open burning

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 9. Open burning of solid waste is prohibited at a restricted waste site Type III and a construction/demolition site. Burning of solid waste must occur only in an incinerator permitted under 329 IAC 11 and operating in compliance with all applicable air pollution control requirements. (*Solid Waste Management Board; 329 IAC 10-36-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-10 Diversion of surface water

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 10. A restricted waste site Type III and a construction/demolition site must not deposit solid waste in standing or ponded water except for that water resulting from precipitation directly upon the working face. (*Solid Waste Management Board; 329 IAC 10-36-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-11 Cover; general provisions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 11. (a) Cover for a restricted waste site Type III and a construction/demolition site must be soil of Unified Soil Classification ML, CL, MH, CH, or OH or other suitable material approved by the commissioner to provide an adequate level of environmental protection.

(b) Cover must be applied and maintained at a restricted waste site Type III and a construction/demolition site in accordance with the applicable requirements of this rule and 329 IAC 10-37. Other provisions for cover may be approved by the commissioner if it can be demonstrated that an alternate cover or site design will provide an adequate level of environmental protection. (*Solid Waste Management Board; 329 IAC 10-36-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1913; readopted filed Jan 10, 2001, 3:25 p.m.:*

24 IR 1535)

329 IAC 10-36-12 Cover; restricted waste site type III and construction/demolition sites

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. (a) A restricted waste site Type III must apply and compact no less than six (6) inches of intermediate cover annually over all exposed solid waste regardless of weather conditions.

(b) A construction/demolition site must apply no less than six (6) inches of cover weekly over all exposed solid waste regardless of weather conditions. (*Solid Waste Management Board; 329 IAC 10-36-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-13 Dispersal control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 13. (a) Notwithstanding the cover requirements of this rule and 329 IAC 10-37 for a restricted waste site Type III, if the facility operation is found to be in violation of fugitive dust rules of the air pollution control board or if the commissioner documents evidence of visible waste deposits carried by wind or surface water beyond the site property boundary, the restricted waste site Type III must complete the following:

(1) Apply daily cover.

(2) Submit a plan to control dispersal.

(b) Application of daily cover must continue until a dispersal control plan is approved by the commissioner. (*Solid Waste Management Board; 329 IAC 10-36-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1913; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-14 Grading and soil stabilization

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 14. (a) Cover material applied as required in sections 11 through 13 of this rule and 329 IAC 10-37 must be continuously maintained, including application and compaction of additional cover as needed to maintain required depth.

(b) A grass or ground cover crop must be established and maintained continuously as soon as weather permits and seasonal conditions are suitable on any portion of the restricted waste site Type III or construction/demolition site that has received final cover except where other provisions for land use have been approved by the commissioner.

(c) A restricted waste site Type III and a construction/demolition site must be graded to promote surface water drainage and to prevent the ponding of water on previously filled areas.

(d) Vegetation must be cleared only as necessary. (*Solid Waste Management Board; 329 IAC 10-36-14; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-15 Surface leachate control

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 15. (a) Any leachate on the surface of a restricted waste site Type III and a construction/demolition site must be immediately managed or controlled to prevent off-site migration.

(b) Any surface movement of leachate past a point fifty (50) feet outside of the solid waste boundary is prohibited except as specified in the facility permit. (*Solid Waste Management Board; 329 IAC 10-36-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-16 Leachate disposal

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. Any discharge or disposal of collected leachate must be in accordance with applicable local, state, and federal laws and rules. (*Solid Waste Management Board; 329 IAC 10-36-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-17 Prohibition on accepting municipal waste by a construction/demolition site

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 17. (a) Prior to accepting a shipment of municipal waste from a transfer station located inside or outside of Indiana, a construction/demolition site must receive a copy of the manifest and must review the manifest to determine whether the items listed under 329 IAC 11-15-3 are included on the manifest.

(b) A construction/demolition site must not knowingly accept a shipment of municipal waste from a transfer station located inside or outside of Indiana if:

- (1) the municipal waste is not accompanied by a manifest that contains the information required under 329 IAC 11-15-3; or
- (2) the construction/demolition site has received notice from the department that the commissioner has issued an order under IC 13-20-6-3 or IC 13-20-6-4 that suspends the waste transfer activities within Indiana of the transfer station or operator that is listed on the manifest accompanying the shipment of municipal waste.

(c) Subsection (b)(2) does not apply unless the department has sent a notice by certified mail, return receipt requested, to the construction/demolition site that the commissioner has suspended the waste transfer activities of the transfer station or operator listed on the manifest. The notice must contain the following:

- (1) The name of the operator or transfer station subject to the commissioner's order to suspend waste transfer activities.
- (2) The date on which the waste transfer activities are suspended under the commissioner's order.
- (3) The acknowledgement number issued to the operator under IC 13-20-6-4 if applicable.
- (4) The location of the transfer station if the order applies to a transfer station.

(d) Subsection (b)(2) does not apply after the department has notified a suspended transfer station or operator that they may resume waste transfer activities in Indiana. The notice to the formerly suspended transfer station or operator must contain the date in which waste transfer activities may resume. A copy of this notice must be sent by the department, via certified mail, return receipt requested, to each construction/demolition site that was sent the applicable notice under subsection (c). (*Solid Waste Management Board; 329 IAC 10-36-17; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1914; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-18 Violations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 18. (a) A construction/demolition site that knowingly accepts a shipment of municipal waste in contravention to section 17(b) of this rule violates this rule.

(b) Acceptance of a shipment of municipal waste is not a violation of this rule if:

- (1) the construction/demolition site did not receive a notice under section 17(c) of this rule that the department suspended the waste transfer activities of a transfer station or operator listed on the manifest; or
- (2) the construction/demolition site did not receive a notice under section 17(d) that the department allowed the waste transfer activities of a transfer station or operator listed on the manifest to resume.

(*Solid Waste Management Board; 329 IAC 10-36-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1914; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-36-19 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-1-2-23; IC 36-9-30

Sec. 19. As used in sections 17 and 18 of this rule, the following definitions apply:

- (1) "Manifest" means the form used for identifying the quantity, origin, and operators involved in a shipment, and the destination of municipal solid waste during its transportation.
- (2) "Municipal waste" refers to any garbage, refuse, industrial lunchroom or office waste, and other material resulting from the operation of residential, municipal, commercial, or institutional establishments, and from community activities. The term does not include the following:
 - (A) Special waste, as defined in 329 IAC 10-2-179.
 - (B) Hazardous waste regulated under IC 13-22 or under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. 6901 et seq. in effect on January 1, 1990.
 - (C) Infectious waste as defined in 329 IAC 10-2-96.
 - (D) Waste that results from the combustion of coal and that is referred to in IC 13-19-3-3.

(E) Materials that are being transported to a facility for reprocessing or reuse. As used in this subdivision, "reprocessing or reuse" does not include:

- (i) incineration; or
- (ii) placement in a landfill.

(3) "Operator" refers to a corporation, a partnership, a business association, a unit (as defined in IC 36-1-2-23), or an individual who is a sole proprietor that is one (1) of the following:

- (A) A broker.
- (B) A person who manages the activities of a transfer station that receives municipal waste.
- (C) A transporter.

(4) "Waste transfer activities" refers to the participation by a:

- (A) broker or transporter who is a resident of Indiana or not a resident of Indiana; or
- (B) transfer station located inside Indiana or outside Indiana that receives municipal waste for the collection or transportation of municipal waste for disposal or incineration in Indiana.

(Solid Waste Management Board; 329 IAC 10-36-19; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1915; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 37. Restricted Waste Site Type III and Construction/Demolition Sites; Closure Requirements

329 IAC 10-37-1 Performance standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. Owners or operators of a restricted waste site Type III and a construction/demolition site shall close the facilities in a manner that:

- (1) minimizes the need for further maintenance;
- (2) controls post-closure escape of waste, waste constituents, leachate, contaminated precipitation, or waste decomposition products to the ground or surface waters or the atmosphere; and
- (3) at a minimum, is in compliance with applicable closure provisions and conditions imposed in the facility permit.

(Solid Waste Management Board; 329 IAC 10-37-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1915; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-37-2 Final cover; restricted waste site Type III

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Owners or operators of a restricted waste site Type III shall apply and compact final cover of not less than two (2) feet within one (1) year of when an area is filled to its approved elevation.

(b) A restricted waste site Type III must meet the following requirements for final cover:

- (1) The maximum projected erosion rate must be five (5) tons per acre per year.
- (2) The final compacted cover must be as specified in subsection (a).
- (3) The final cover must have a slope of not less than two percent (2%) and not greater than thirty-three percent (33%).

(Solid Waste Management Board; 329 IAC 10-37-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1915; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-37-3 Final cover; construction/demolition sites

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Owners or operators of a construction/demolition site shall apply no less than two (2) feet of final cover over any area in the fill within one hundred eighty (180) days when:

- (1) solid waste has not been disposed for one (1) year; or
 - (2) any area of the construction/demolition site has been filled to its approved elevation.
- (b) The construction/demolition site must meet the following requirements for final cover:

- (1) The maximum projected erosion rate must be five (5) tons per acre per year.
- (2) The final compacted cover must be as specified in subsection (a).
- (3) The final cover must have a slope of not less than two percent (2%) and not greater than thirty-three percent (33%).

(Solid Waste Management Board; 329 IAC 10-37-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1915; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

p.m.: 24 IR 1535)

329 IAC 10-37-4 Closure plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Owners or operators of a restricted waste site Type III and a construction/demolition site shall have a written closure plan. The closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved by the commissioner as part of the permit. The approved closure plan will become a condition of the permit.

(b) The closure plan, certified by a registered professional engineer, must identify the steps necessary to completely close the restricted waste site Type III or construction/demolition site at any point during its intended life in accordance with section 1 of this rule. The closure plan must include the following:

- (1) A description of the steps that will be used to partially close, if applicable, and finally close the facility in accordance with section 1 of this rule.
- (2) A listing of labor, materials, and testing necessary to close the facility.
- (3) An estimate of the expected year of closure and a schedule for final closure. The schedule must include:
 - (A) the total time required to close the facility; and
 - (B) the time required for completion of intervening closure activities.
- (4) An estimate of the cost per acre of providing final cover and vegetation. Such cost must be that which is necessary for providing the following, but must not be less than five thousand dollars (\$5,000) per acre:
 - (A) Two (2) feet of compacted clay soil.
 - (B) Six (6) inches of topsoil.
 - (C) Vegetation.
 - (D) Certification of closure, including any testing necessary for such certification.
- (5) The closure plan must separately identify any closure costs for items other than providing final cover and vegetation.
- (6) The closure plan must list a closure cost estimate equal to the costs specified by subdivision (5) plus the product of the total area of the site permitted for filling and the cost per unit area specified by subdivision (4). Closure costs must be calculated based on the cost necessary for the work to be performed by a third party.
- (7) The estimate of the cost per acre of providing final cover and vegetation must be that necessary for providing the activities as specified in the closure plan; however, the sum of the closure cost estimate and post-closure cost estimate must not be less than fifteen thousand dollars (\$15,000) per acre or fraction of an acre covered by the permitted facility.
- (8) If the restricted waste site Type III or the construction/demolition site utilizes the closure trust fund option or funds the letter of credit on an annual basis, as contained in 329 IAC 10-39, then for each yearly period following the beginning of operation of the facility, the plan must specify the maximum area of the facility into which solid waste will have been deposited through that year of the facility's life and must delineate such areas on the copy of the facility's final contour map. The closure plan must list closure cost estimates for each year of the anticipated life of the facility equal to the costs specified by subdivision (5), plus the product of the noted maximum areas of the site and the cost per unit area specified by subdivision (4).

(Solid Waste Management Board; 329 IAC 10-37-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1916; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-37-5 Partial closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. (a) Areas of a restricted waste site Type III or a construction/demolition site that have received final cover, and are graded and have established vegetation in accordance with the applicable provisions of this rule and 329 IAC 10-36 and the approved closure plan prior to closure of the facility may receive certification of partial closure.

(b) The owner or operator of a restricted waste site Type III or a construction/demolition site shall submit to the commissioner a certification signed by both the owner or operator and a registered professional engineer, that specifically identifies the closed areas and indicates that the partial closure is in accordance with the approved closure plan and the standards of this article. Certifications of partial closure must not be made for an area until the final cover has been completely provided for that area and vegetation has been established. *(Solid Waste Management Board; 329 IAC 10-37-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1916; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-37-6 Initiation of final closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) Within fifteen (15) days after receiving the final volume of waste, the owner or operator of a restricted waste site Type III or a construction/demolition site shall initiate final closure of all areas not certified as partially closed. Final closure must occur in accordance with the approved closure plan.

(b) The owner or operator of a restricted waste site Type III or a construction/demolition site shall complete other closure activities in accordance with the approved closure plan. (*Solid Waste Management Board; 329 IAC 10-37-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1917; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-37-7 Closure certification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. (a) As part of the final closure of a facility, the owner or operator of a restricted waste site Type III or a construction/demolition site shall submit to the commissioner the following:

(1) A certification statement, signed by both the owner or operator and a registered professional engineer, that the facility has been closed in accordance with the approved closure plan.

(2) Verification that the owner of the property on which the facility is located has recorded a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, which will in perpetuity notify any potential purchaser of the property that the land has been used as a solid waste land disposal facility. At a minimum, the recording must contain the following:

(A) The general types and location of waste.

(B) The depth of fill.

(C) A plot plan, with surface contours at intervals of two (2) feet, which must indicate:

(i) final land surface water run-off direction;

(ii) surface water diversion structures after completion of the operation; and

(iii) final grading.

(D) A statement that no construction, installation of wells, pipes, conduits, or septic systems, or any other excavation must occur on the property without approval by the commissioner.

(b) The final closure will be deemed adequate unless within one hundred fifty (150) days of receipt of the documentation required by subsection (a), the commissioner issues a notice of deficiency of final closure, including additional action that needs to be taken and the timetable for the necessary additional actions. (*Solid Waste Management Board; 329 IAC 10-37-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1917; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 38. Restricted Waste Site Type III and Construction/Demolition Sites; Post-Closure Requirements

329 IAC 10-38-1 Performance standard

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. Owners or operators of a restricted waste site Type III and a construction/demolition site shall maintain the facilities during the post-closure period in a manner that:

(1) minimizes the need for further maintenance;

(2) controls post-closure escape of waste, waste constituents, leachate, contaminated precipitation, or waste decomposition products to the ground or surface waters or the atmosphere; and

(3) at a minimum, is in compliance with applicable closure provisions and conditions imposed in the facility permit.

(*Solid Waste Management Board; 329 IAC 10-38-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1917; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-38-2 Post-closure duties

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Owners or operators of a restricted waste site Type III and a construction/demolition site have the following duties after closure of the facility:

(1) Post-closure activities must be performed in accordance with the approved post-closure plan as specified in section 3 of this rule.

(2) Inspection of the facility at least twice per year with a written report on the condition of the facility to be submitted to the commissioner.

- (3) Maintenance of the minimum thickness of final cover and vegetation as required by 329 IAC 10-36 and 329 IAC 10-37.
- (4) Maintenance of the final contours of the facility in accordance with the applicable standards of 329 IAC 10-36 and 329 IAC 10-37, and at a minimum, to provide that no ponding of water occurs on filled areas.
- (5) Control of any vegetation on vehicular access ways to monitoring wells as required by 329 IAC 10-36-2(c).
- (6) Control of vegetation at the site as necessary to enable determination of the need for slope and cover maintenance and leachate outbreak abatement.
- (7) Maintenance of access control and benchmarks at the facility.
- (8) If applicable, maintenance and monitoring of any water quality monitoring devices, leachate collection and treatment systems, or methane control systems.
- (9) Control of any leachate at the facility as required by 329 IAC 10-36.

(b) Post-closure requirements imposed by this section must be followed for a period of thirty (30) years following the date of final closure certification in accordance with 329 IAC 10-37-7. *(Solid Waste Management Board; 329 IAC 10-38-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1917; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-38-3 Post-closure plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Owners or operators of a restricted waste site Type III and a construction/demolition site shall have a written post-closure plan. The post-closure plan must be submitted with the permit application in accordance with 329 IAC 10-11 and be approved if acceptable by the commissioner as part of the permit. The approved post-closure plan must become a condition of the permit. If the plan is determined to be unacceptable, the commissioner shall identify the items needed to make it complete.

(b) The post-closure plan must identify the activities that will be carried on after closure under section 2 of this rule and must include at least the following:

- (1) A description of the planned maintenance activities and the frequency at which they will be performed.
- (2) The name, address, and telephone number of the owner or operator with responsibility for maintaining the site after closure whom the commissioner may contact about the solid waste facility during the post-closure period.
- (3) A post-closure cost estimate in accordance with 329 IAC 10-39-3. Post-closure costs must be calculated based on the cost necessary for the work to be performed by a third party. For post-closure maintenance of final cover and vegetation, the amount per acre must be ten percent (10%) of the cost calculated under 329 IAC 10-37-4(b)(4) multiplied by the total acreage of the site permitted for filling. The estimate of the post-closure cost per acre must be that necessary for providing the activities as specified in the post-closure plan; however, the sum of the closure cost estimate and post-closure cost estimate must not be less than fifteen thousand dollars (\$15,000) per acre or fraction of an acre covered by the permitted facility.

(Solid Waste Management Board; 329 IAC 10-38-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 10-38-4 Post-closure certification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 4. When the post-closure care requirements of this rule have been completed, the owner or operator of a restricted waste site Type III or a construction/demolition site shall submit a certification statement signed by both the owner or operator and a registered professional engineer that the post-closure care requirements have been met and the facility has stabilized. The post-closure certification will be deemed adequate unless within one hundred fifty (150) days of receipt of the post-closure certification, the commissioner issues notice of the deficiency of post-closure, including actions necessary to correct the deficiency. *(Solid Waste Management Board; 329 IAC 10-38-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-38-5 Responsibility after post-closure to correct nuisance

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 5. Subsequent to the completion of post-closure, the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located shall be responsible for correcting and controlling any nuisance conditions occurring at the facility. *(Solid Waste Management Board; 329 IAC 10-38-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 10-38-6 Elimination of threats to human health or the environment after post-closure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. Subsequent to the completion of post-closure, the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located shall be responsible for eliminating any threat to human health or the environment. (*Solid Waste Management Board; 329 IAC 10-38-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 10-38-7 Remedial action

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. The commissioner may proceed under IC 13-7-8.7 [*IC 13-7-8.7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*] and rules adopted under IC 13-7-8.7-7(d) [*IC 13-7-8.7-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*] that require the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located, or any other responsible party under IC 13-7-8.7 [*IC 13-7-8.7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*], to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices, if the commissioner determines that the closed facility is a threat to human health or the environment, due to a release of a hazardous substance from the facility into the environment. (*Solid Waste Management Board; 329 IAC 10-38-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 39. Solid Waste Land Disposal Facilities; Financial Responsibility**329 IAC 10-39-1 Applicability**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) This rule applies to all solid waste land disposal facilities that:

(1) are required to have a permit by 329 IAC 10-11-1; and

(2) apply for a permit after the promulgation of this rule or have an operating permit in effect on the effective date of this article.

(b) The permittee for solid waste land disposal facilities regulated by this rule shall provide financial responsibility for closure and post-closure in accordance with the following:

(1) Closure and post-closure rules, including:

(A) 329 IAC 10-22 and 329 IAC 10-23;

(B) 329 IAC 10-30 and 329 IAC 10-31; or

(C) 329 IAC 10-37 and 329 IAC 10-38.

(2) Sections 2 through 5 of this rule.

(c) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless they have established financial responsibility for post-closure by choosing a financial assurance mechanism under section 3(a) of this rule and by funding the same under section 3(b) of this rule.

(d) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless they have established financial responsibility for closure by choosing a financial assurance mechanism under section 2(a) of this rule and by funding the same under section 2(b) of this rule.

(e) Solid waste land disposal facilities that apply for permits after the promulgation of this rule must provide financial responsibility as required by 329 IAC 10-11-2(b)(12) [*329 IAC 10-11-2 was repealed filed Aug 2, 1999, 11:50 a.m.: 22 IR 3875.*]. The documents establishing both the closure and post-closure financial responsibility must be executed by and approved by the commissioner prior to operation of the facility. In addition, the financial assurance mechanism must be funded under sections 2(b) and 3(b) of this rule prior to operation. (*Solid Waste Management Board; 329 IAC 10-39-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918*)

329 IAC 10-39-2 Closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 2. (a) The permittee shall establish financial responsibility for closure of the solid waste land disposal facility. The

permittee shall choose from the following options:

- (1) The trust fund option, including the following:
 - (A) The permittee may satisfy the requirements of this section by establishing a trust agreement on forms provided by the commissioner or on such other form as approved by the commissioner.
 - (B) All trust agreements must contain the following:
 - (i) Identification of solid waste land disposal facilities and corresponding closure cost estimates covered by the trust agreement.
 - (ii) The establishment of a trust fund in the amount determined by subsection (b) and guarantee payments from that fund either reimbursing the permittee for commissioner-approved closure work done or making payments to the commissioner for accomplishing required closure work.
 - (iii) The requirement of annual evaluations of the trust to be submitted to the commissioner.
 - (iv) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.
 - (v) The requirement of the trustee to notify the commissioner, in writing, of the failure of the permittee to make a required payment into the fund.
 - (vi) The establishment that the trust is irrevocable unless terminated, in writing, with the approval of the permittee, the trustee, and the commissioner.
 - (vii) A certification that the signatory of the trust agreement for the permittee was duly authorized to bind the permittee.
 - (viii) A notarization of all signatures by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.
 - (ix) The establishment that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal and state of Indiana agency.
 - (x) The requirement of initial payment into the fund be made within thirty (30) days of the commissioner's approval of the trust agreement, and any subsequent payments be made within thirty (30) days of each anniversary of the initial payment.
- (2) The surety bond option, including the following:
 - (A) The permittee may satisfy the requirements of this section by establishing a surety bond on forms provided by the commissioner or on such other forms as approved by the commissioner.
 - (B) All surety bonds must contain the following:
 - (i) The establishment of penal sums in the amount determined by subsection (b).
 - (ii) Provision that the surety will be liable to fulfill the permittee's closure obligations upon notice from the commissioner that the permittee has failed to do so.
 - (iii) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the permittee and the commissioner at least one hundred twenty (120) days prior to the effective date of the cancellation.
 - (iv) Provision that the permittee may not terminate the bond without prior written authorization by the commissioner.
 - (C) The permittee shall establish a standby trust fund to be utilized in the event the permittee fails to fulfill closure obligations and the bond guarantee is exercised. Such trust fund must be established in accordance with the requirements of subdivision (1).
 - (D) The surety company issuing the bond must be among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury.
 - (E) The surety will not be liable for deficiencies in the performance of closure by the permittee after the commissioner releases the permittee in accordance with section 6 of this rule.
- (3) The letter of credit option, including the following:
 - (A) The permittee may satisfy the requirements of this section by establishing a letter of credit on forms provided by the commissioner or on such other forms as approved by the commissioner.
 - (B) All letters of credit must contain the following:
 - (i) The establishment of credit in the amount determined by subsection (b).
 - (ii) Irrevocability.
 - (iii) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the permittee and the commissioner at least one hundred twenty (120) days prior to the effective date of cancellation.
 - (iv) Provision that, upon written notice from the commissioner, the institution issuing the letter of credit will state that the permittee's obligations have not been fulfilled, and the institution will deposit funds equal to the amount of the letter of credit into a trust fund to be used to ensure the permittee's closure obligations are fulfilled.

- (C) The permittee shall establish a standby trust fund to be utilized in the event the permittee fails to fulfill its closure obligations and the letter of credit is utilized. Such trust funds must be established in accordance with the requirements of subdivision (1).
- (D) The issuing institution must be an entity that has the authority to issue letters of credit and whose letters of credit operations are regulated and examined by a federal or Indiana agency.
- (4) The insurance option, including the following:
- (A) The permittee may satisfy the requirements of this section by providing evidence of insurance on forms provided by the commissioner or on such other forms as approved by the commissioner.
- (B) All insurance must include the following requirements:
- (i) Be in the amount determined by subsection (b).
 - (ii) Provide that, upon written notification to the insurer by the commissioner that the permittee has failed to perform final closure, the insurer shall make payments in any amount, not to exceed the amount insured, and to any person authorized by the commissioner.
 - (iii) Provide that the permittee shall maintain the policy in full force and effect unless the commissioner consents in writing to termination of the policy.
 - (iv) Provide for assignment of the policy to a transferee permittee.
 - (v) Provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure of the permittee to pay the premium. No policy may be canceled, be terminated, or fail to be renewed unless at least one hundred twenty (120) days prior to such event the commissioner and the permittee are notified by the insurer in writing.
- (C) The insurer shall either be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one (1) or more states.
- (5) The financial test for restricted waste sites option, including the following:
- (A) This financial test is only available for restricted waste sites.
- (B) If a permittee meets the criteria set forth in item (i) and either item (ii) or (iii), the permittee shall be deemed to have established financial responsibility as follows:
- (i) Less than fifty percent (50%) of the company's gross revenues are derived from waste management.
 - (ii) The permittee meets the following four (4) tests:
 - (AA) Two (2) of the following three (3) ratios are met:
 - (aa) A ratio of total liabilities to net worth less than two (2.0).
 - (bb) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
 - (cc) A ratio of current assets to current liabilities greater than one and one-half (1.5).
 - (BB) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and current post-closure cost estimates.
 - (CC) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (DD) Assets in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure costs estimates.
 - (iii) The permittee meets the following four (4) tests:
 - (AA) A current rating for the permittee's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.
 - (BB) Tangible net worth of at least six (6) times the sum of the current closure and current post-closure cost estimates.
 - (CC) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (DD) Assets located in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure estimates.
- (C) To demonstrate the financial test has been met, the permittee shall submit the following documents to the commissioner:
- (i) A form provided by the commissioner, or such other form as approved by the commissioner, signed by the permittee's chief financial officer, demonstrating the applicable criteria have been met.
 - (ii) A copy of an independent certified public accountant's report examining the permittee's financial statements for the latest completed fiscal year.
 - (iii) A special report from the permittee's independent certified public accountant to the permittee stating:
 - (AA) the certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - (BB) in connection with that procedure, no matters come to the attention of the certified public accountant

that caused the certified public accountant to believe that the specified data should be adjusted.

(D) The permittee shall submit updated clause (C) documents to the commissioner within ninety (90) days after the close of each fiscal year.

(E) If at any time the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the year-end financial data shows that the permittee no longer meets the requirements.

(F) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the independent certified public accountant's report examining the permittee's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, they indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within thirty (30) days after notification of the disallowance.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) A local government permittee that satisfies the following requirements may demonstrate financial assurance up to the amount specified in clause (C):

(i) The local government permittee shall meet the following financial component requirements:

(AA) The local government permittee shall satisfy either of the following as applicable:

(aa) If the local government permittee has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the local government permittee shall have a current rating of:

(1) Aaa, Aa, A, or Baa as issued by Moody's; or

(2) AAA, AA, A, or BBB as issued by Standard and Poor's;

on all such general obligation bonds.

(bb) The local government permittee shall satisfy the following financial ratios based on the local government permittee's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to five-hundredths (0.05).

(2) A ratio of annual debt service to total expenditures less than or equal to two-tenths (0.20).

(BB) The local government permittee shall prepare the local government permittee's financial statements in conformity with generally accepted accounting principles (GAAP) for governments and have the financial statements audited by an independent certified public accountant or the state board of accounts.

(CC) A local government permittee is not eligible to assure the local government permittee's obligations under this subdivision if any of the following applies to the local government permittee:

(aa) The local government permittee is currently in default on any outstanding general obligation bonds.

(bb) The local government permittee has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(cc) The local government permittee has operated at a deficit equal to five percent (5%) or more of total annual revenue in each of the past two (2) fiscal years.

(dd) The local government permittee receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the state board of accounts auditing its financial statement as required under subitem (BB). The commissioner may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the commissioner deems the qualification insufficient to warrant disallowance of use of the test.

(DD) As used in this subdivision, the following terms apply:

(aa) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government permittee on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations, such as pensions.

(bb) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(cc) "Deficit" means total annual revenues minus total annual expenditures.

(dd) "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

(ee) "Total revenues" means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenues from funds managed by the local government permittee on behalf of a specific third party.

- (ii) The local government permittee shall meet the following public notice component requirements:
 - (AA) The local government permittee shall place a reference to the closure and post-closure care costs assured through the financial test into the local government permittee's next comprehensive annual financial report (CAFR) at the time of the next required local government financial test annual submittal or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the following:
 - (aa) Nature and source of closure and post-closure care requirements.
 - (bb) Reported liability at the balance sheet date.
 - (cc) Estimated total closure and post-closure care cost remaining to be recognized.
 - (dd) Percentage of landfill capacity used to date.
 - (ee) Estimated landfill life in years.
 - (BB) A reference to corrective action costs must be placed in the CAFR not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.
 - (CC) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.
 - (DD) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.
- (iii) The local government permittee shall meet the following record keeping and reporting requirements:
 - (AA) The local government permittee shall place the following items in the facility's operating record:
 - (aa) A letter signed by the local government permittee's chief financial officer that completes the following:
 - (1) Lists all of the current cost estimates covered by a financial test as described in clause (C).
 - (2) Provides evidence and certifies that the local government permittee meets the conditions of item (i)(AA), (i)(BB), and (i)(CC).
 - (3) Certifies that the local government permittee meets the conditions of item (ii) and clause (C).
 - (bb) The local government permittee's independently audited year-end financial statements for the latest fiscal year (except for local government permittees where audits are required every two (2) years when unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who shall be an independent certified public accountant, or the state board of accounts that conducts equivalent comprehensive audits.
 - (cc) A report to the local government permittee from the local government permittee's independent certified public accountant or the state board of accounts based on performing an agreed upon procedures engagement relative to the:
 - (1) financial ratios required by item (i)(AA)(bb), if applicable; and
 - (2) requirements of item (i)(BB), (i)(CC)(cc), and (i)(CC)(dd).
 The independent certified public accountant's or state board of accounts' report must state the procedures performed and the findings.
 - (dd) A copy of the CAFR used to comply with item (ii) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.
 - (BB) The items required in subitem (AA) must be placed in the facility operating record as follows:
 - (aa) In the case of closure and post-closure care, either at the time of the next required local government financial test annual submittal or prior to the initial receipt of waste at the facility, whichever is later.
 - (bb) In the case of corrective action, not later than one hundred twenty (120) days after the corrective action remedy is selected in accordance with the requirements of 329 IAC 10-21-13.
 - (CC) After the initial placement of the items in the facility's operating record, the local government permittee shall update the information and place the updated information in the operating record within one hundred eighty (180) days following the close of the local government permittee's fiscal year.
 - (DD) The local government permittee is no longer required to meet the requirements of this item when either of the following occur:
 - (aa) The local government permittee substitutes alternate financial assurance as specified in this rule.
 - (bb) The local government permittee is released from the requirements of this rule in accordance with section 6 or 11 of this rule.
 - (EE) A local government permittee shall satisfy the requirements of the financial test at the close of each

fiscal year. If the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall, within one hundred twenty (120) days following the close of the local government permittee's fiscal year, complete the following:

- (aa) Obtain alternative financial assurance that meets the requirements of this rule.
- (bb) Place the required submissions for that assurance in the facility's operating record.
- (cc) Notify the commissioner that the local government permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(FF) The commissioner, based on a reasonable belief that the local government permittee may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government permittee at any time. If the commissioner finds, on the basis of such reports or other information, that the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall provide alternate financial assurance in accordance with this rule.

(GG) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the local government permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the local government permittee does not meet the requirements of this subdivision. The local government permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(C) The local government permittee shall complete the calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which a local government permittee can assure under this subdivision is determined as follows:

(i) If the local government permittee does not assure other environmental obligations through a financial test, the local government permittee may assure closure, post-closure, and corrective action costs that equal up to forty-three percent (43%) of the local government permittee's total annual revenue.

(ii) If the local government permittee assures other environmental obligations through a financial test, including those associated with:

- (AA) underground injection control (UIC) facilities under 40 CFR 144.62;
- (BB) petroleum underground storage tank facilities under 329 IAC 9-8;
- (CC) polychlorinated biphenyls (PCB) storage facilities under 40 CFR 761; and
- (DD) hazardous waste treatment, storage, and disposal facilities under 329 IAC 3.1-14 or 329 IAC 3.1-15;

the local government permittee shall add those costs to the closure, post-closure, and corrective action costs the local government permittee seeks to assure under this subdivision. The total that may be assured must not exceed forty-three percent (43%) of the local government permittee's total annual revenue.

(iii) The local government permittee shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in this clause.

(7) The local government guarantee option, including the following:

(A) A permittee may demonstrate financial assurance for closure, post-closure, and corrective action, as required by sections 2, 3, and 10 of this rule, by obtaining a written guarantee provided by a local government.

(B) The guarantor shall meet the requirements of the local government financial test in subdivision (6) and shall comply with the terms of a written guarantee as follows:

(i) The guarantee must be effective:

- (AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or
- (BB) no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.

(ii) The guarantee must provide the following:

(AA) If the permittee fails to perform any combination of closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor shall:

- (aa) perform or pay a third party to perform any combination of closure, post-closure care, or corrective action as required under this subitem; or
- (bb) establish a fully funded trust fund as specified in subdivision (1) in the name of the permittee.

(BB) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the commissioner. Cancellation must not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the permittee and the commissioner as evidenced by the return receipts.

(CC) If a guarantee is canceled under subitem (BB), the permittee shall, within ninety (90) days following

receipt of the cancellation notice by the permittee and the commissioner, complete the following:

- (aa) Obtain alternate financial assurance under this rule.
- (bb) Place evidence of that alternate financial assurance in the facility operating record.
- (cc) Notify the commissioner.

(DD) If the permittee fails to provide alternate financial assurance within the ninety (90) day period under subitem (CC), the guarantor shall complete the following:

- (aa) Provide alternate assurance within one hundred twenty (120) days following the guarantor's notice of cancellation.
- (bb) Place evidence of the alternate assurance in the facility operating record.
- (cc) Notify the commissioner.

(C) The permittee shall complete the following record keeping and reporting requirements:

- (i) The permittee shall place a certified copy of the guarantee along with the items required under subdivision (6)(B)(iii) into the facility's operating record:
 - (AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or
 - (BB) no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.
- (ii) The permittee is no longer required to maintain the items specified in this clause when:
 - (AA) the permittee substitutes alternate financial assurance as specified in this rule; or
 - (BB) the permittee is released from the requirements of this rule in accordance with section 6 or 11 of this rule.
- (iii) If a local government guarantor no longer meets the requirements of subdivision (6), the permittee shall, within ninety (90) days, complete the following:
 - (AA) Obtain alternative assurance.
 - (BB) Place evidence of the alternate assurance in the facility operating record.
 - (CC) Notify the commissioner.

If the permittee fails to obtain alternate financial assurance within the ninety (90) day period, the guarantor shall provide that alternate assurance within the next thirty (30) days.

(b) Financial responsibility closure cost estimate requirements must be as follows:

(1) For purposes of establishing financial responsibility, the permittee shall have a detailed written estimate of the cost of closing the facility based on the following:

- (A) The closure costs derived under:
 - (i) 329 IAC 10-22-2(c);
 - (ii) 329 IAC 10-30-4(b); or
 - (iii) 329 IAC 10-37-4(b).

(B) One (1) of the closure cost estimating standards under subdivision (3).

(2) As used in this section, "establishment of financial responsibility" means submission of financial responsibility to the commissioner in the form of one (1) of the options under subsection (a).

(3) The permittee shall use one (1) of the following closure cost estimating standards:

(A) The entire solid waste land disposal facility closure standard is an amount that equals the estimated total cost of closing the entire solid waste land disposal facility, less an amount representing portions of the solid waste land disposal facility that have been certified for partial closure in accordance with:

- (i) 329 IAC 10-22-3;
- (ii) 329 IAC 10-30-5; or
- (iii) 329 IAC 10-37-5.

(B) The incremental closure standard is an amount which, for any year of operation, equals the total cost of closing the portion of the solid waste land disposal facility dedicated to the current year of solid waste land disposal facility operation, plus all closure amounts from all other partially or completely filled portions of the solid waste land disposal facility from prior years of operation that have not yet been certified for partial closure in accordance with:

- (i) 329 IAC 10-22-3;
- (ii) 329 IAC 10-30-5; or
- (iii) 329 IAC 10-37-5.

(c) Until final closure of the solid waste land disposal facility is certified, the permittee shall annually review and submit to the commissioner the financial closure estimate derived under this section within thirty (30) days after the annual submittal date. The funding must be established or updated within thirty (30) days after the original effective date of the establishment of responsibility for closure. The funding must be updated within thirty (30) days after the annual submittal date. The submittal must also include a copy of the final contour map of the solid waste land disposal facility that delineates the boundaries of all areas into which waste

has been placed as of the annual review and certified by a registered professional engineer or registered land surveyor. In addition, as part of the annual review, the permittee shall revise the closure estimate as follows:

(1) For inflation, using an inflation factor derived from the annual implicit price deflator for gross national product as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year as follows:

(A) The first revision is made by multiplying the original closure cost estimate by the inflation factor. The result is the revised closure cost estimate.

(B) Subsequent revisions are made by multiplying the latest revised closure cost estimate by the latest inflation factor.

(2) For changes in the closure plan, whenever such changes increase the cost of closure.

(d) The permittee may revise the closure cost estimate downward whenever a change in the closure plan decreases the cost of closure or whenever portions of the solid waste land disposal facility have been certified for partial closure under:

(1) 329 IAC 10-22-3;

(2) 329 IAC 10-30-5; or

(3) 329 IAC 10-37-5.

(Solid Waste Management Board; 329 IAC 10-39-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1919; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2817; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2228; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3866; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27)

329 IAC 10-39-3 Post-closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 3. (a) The permittee shall establish financial responsibility for post-closure care of the solid waste land disposal facility. The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee shall establish a trust agreement on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All trust agreements must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(2) The surety bond option, including the following:

(A) The permittee shall establish a surety bond on forms provided by the commissioner or on such other form as approved by the commissioner.

(B) All surety bonds must conform to the requirements detailed in section 2(a)(2)(B) through 2(a)(2)(E) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(3) The letter of credit option, including the following:

(A) The permittee shall establish a letter of credit on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(4) The insurance option, including the following:

(A) The permittee shall provide evidence of insurance on forms provided by the commissioner or on such other forms as approved by the commissioner.

(B) All insurance must conform to the requirements detailed in section 2(a)(4)(B) through 2(a)(4)(C) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites.

(B) If a permittee meets the criteria set forth in section 2(a)(5)(B) through 2(a)(5)(D) of this rule, the permittee shall be deemed to have established financial responsibility.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If a permittee meets the criteria set forth in section 2(a)(6)(B) through 2(a)(6)(C) of this rule, the permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state

board of accounts' annual financial audit of the permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(7) The local government guarantee option. If the local government guarantor and the permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the permittee shall be deemed to have established financial responsibility.

(b) The permittee shall choose a financial responsibility mechanism that guarantees funds will be available to meet the post-closure requirements of the solid waste land disposal facility, including the following:

(1) Funding must equal the amount determined under:

- (A) 329 IAC 10-23-3(c)(5) and 329 IAC 10-23-3(c)(6);
- (B) 329 IAC 10-31-3(b)(4); or
- (C) 329 IAC 10-38-3(b)(4).

(2) Funding may be accomplished by initially funding the chosen financial responsibility mechanism in an amount equal to the amount determined under:

- (A) 329 IAC 10-23-3(c)(5) and 329 IAC 10-23-3(c)(6);
- (B) 329 IAC 10-31-3(b)(4); or
- (C) 329 IAC 10-38-3(b)(4).

(3) Funding may also be accomplished by making annual payments equal to the amount determined by the formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current post-closure cost estimate.
 CV = The current value of the trust fund.
 Y = The number of years remaining in the pay-in period.

Annual funding must be no later than thirty (30) days after either each annual anniversary date of the first payment into the mechanism or the establishment of the mechanism, if no payments are required.

(c) The permittee shall submit an annual update within thirty (30) days after the annual submittal date to the commissioner regarding post-closure financial assurance until final closure certification. (*Solid Waste Management Board; 329 IAC 10-39-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1922; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2235; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3871*)

329 IAC 10-39-4 Multiple facilities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 4. A permittee may use a single financial responsibility mechanism to meet the requirements for more than one (1) solid waste land disposal facility. Evidence of financial responsibility submitted to the commissioner must include a list showing, for each solid waste land disposal facility, the following:

- (1) The solid waste land disposal facility permit number, name, and address.
- (2) The amount of funds available through the mechanism that must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each solid waste land disposal facility.

(*Solid Waste Management Board; 329 IAC 10-39-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1923; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3872*)

329 IAC 10-39-5 Joint financial responsibility for closure and post-closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 5. (a) A permittee may satisfy the requirements for financial responsibility for both closure and post-closure care for one (1) or more solid waste land disposal facilities by using a trust fund, surety bond, letter of credit, or insurance.

(b) In addition to the mechanisms listed under subsection (a), a permittee of a restricted waste site may use a financial test for restricted waste sites.

(c) In addition to the mechanisms listed under subsection (a), a permittee that is a local government may use a local government financial test or local government guarantee.

(d) The mechanisms listed under this section must meet the specifications for the mechanism in sections 2 through 3 of this rule.

(e) The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial responsibility of closure and of post-closure care. (*Solid Waste Management Board; 329 IAC 10-39-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236; filed*

Aug 2, 1999, 11:50 a.m.: 22 IR 3873)

329 IAC 10-39-6 Release of financial responsibility obligations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. As part of the acknowledgement of final closure and post-closure, the commissioner shall notify the permittee that the permittee is no longer required to maintain financial responsibility for closure and post-closure care once the requirements for closure and post-closure have been fulfilled. (*Solid Waste Management Board; 329 IAC 10-39-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924*)

329 IAC 10-39-7 Incapacity of permittee, guarantors, or financial institutions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 7. (a) A permittee shall notify the commissioner by certified mail within ten (10) days after commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., October 1, 1979, naming the permittee as debtor.

(b) A local government guarantor, which provides financial assurance to a permittee, shall notify the permittee and the commissioner by certified mail within ten (10) days after commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., October 1, 1979, naming the local government guarantor as debtor.

(c) A permittee who fulfills the requirements of sections 1 through 5 of this rule by obtaining a trust fund, surety bond, letter of credit, insurance policy, or local government guarantee will be deemed to be without the required financial responsibility in the event of bankruptcy of the:

- (1) trustee;
- (2) institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments; or
- (3) local government guarantor.

The permittee shall establish other financial responsibility within sixty (60) days after such an event. (*Solid Waste Management Board; 329 IAC 10-39-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236*)

329 IAC 10-39-8 Penalty for failure to fund financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-18; IC 13-20; IC 13-30; IC 36-9-30

Sec. 8. In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to obtain, maintain, or fund any financial responsibility mechanism as required by this rule within the prescribed time limits shall be deemed to endanger human health or the environment, and shall be grounds for a proceeding to revoke the solid waste land disposal facility's permit or to order final closure of the solid waste land disposal facility. (*Solid Waste Management Board; 329 IAC 10-39-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2820; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3873*)

329 IAC 10-39-9 Release of funds

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 9. (a) This section applies to all permittees funding financial responsibility mechanisms under this rule whether utilizing the entire facility standard (section 2(b)(3)(A) of this rule) or the incremental standard (section 2(b)(3)(B) of this rule).

(b) Permittees may request release of closure or post-closure financial responsibility funds as follows:

(1) Closure as follows:

(A) Prior to closure of the solid waste land disposal facility, if payments have been made by the permittee as a part of establishing a financial responsibility mechanism, and if the payments total more than the required amount, the permittee may request, and the commissioner shall release the excess amount provided no refund must be made for an amount less than two thousand five hundred dollars (\$2,500). Such request for release must be made no more than once a year.

(B) After beginning final closure, a permittee or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the commissioner for a minimum of ten thousand dollars (\$10,000). However, the permittee must provide maps indicating the closure work that has been completed, and after expenditures for closures have been reimbursed, the remaining amount in the fund must be an adequate amount to complete the remainder of the closure work as required by the closure plan.

(2) Post-closure as follows:

(A) Prior to closure of the solid waste land disposal facility, if payments have been made by the permittee as a part of

establishing a financial responsibility mechanism and if the payments total more than the required amount, the permittee may request, and the commissioner shall release the excess amount provided no refund must be made for an amount less than two thousand five hundred dollars (\$2,500). Such request for release must be made no more than once a year.

(B) During the period of post-closure care, the commissioner may approve a release of funds by an amount of not less than two thousand five hundred dollars (\$2,500) and not more than ten percent (10%) of the current balance of the trust fund, if the permittee demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care. Provided, however, that at no time must the value of the trust fund be allowed to drop below the remaining cost of post-closure care. Such requests for release must be made no more than once a year.

(c) Within thirty (30) days after receipt of a request for release of funds under subsection (b), the commissioner shall determine whether the expenditures are justified and, if so, shall instruct the trustee to make reimbursement in such amounts as the commissioner specifies in writing. If the commissioner determines that the cost of the closure or post-closure will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursement of such amounts as deemed prudent until it is determined that the permittee is no longer required to maintain the financial responsibility. (*Solid Waste Management Board; 329 IAC 10-39-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1924; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3873*)

329 IAC 10-39-10 Financial assurance for corrective action for municipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 10. (a) The owner, operator, or permittee of each MSWLF required to undertake a corrective action program under 329 IAC 10-21-13 shall establish financial assurance for the most recent corrective action program. The owner, operator, or permittee shall choose from the following options:

- (1) The trust fund option, including the following:
 - (A) The owner, operator, or permittee shall demonstrate financial assurance for corrective action by obtaining a trust fund on forms provided by the commissioner or in such other form as approved by the commissioner.
 - (B) All trust funds must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".
 - (2) The surety bond option, including the following:
 - (A) The owner, operator, or permittee shall demonstrate financial assurance for corrective action by obtaining a surety bond on forms provided by the commissioner or in such other form as approved by the commissioner.
 - (B) All surety bonds must conform to the requirements detailed in section 2(a)(2)(B) through 2(a)(2)(E) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".
 - (3) The letter of credit option, including the following:
 - (A) The owner, operator, or permittee shall demonstrate financial assurance for corrective action by obtaining a letter of credit on forms provided by the commissioner or in such other form as approved by the commissioner.
 - (B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".
 - (4) The local government financial test option, including the following:
 - (A) This financial test is only available for owners, operators, or permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.
 - (B) If an owner, operator, or permittee meets the criteria set forth in section 2(a)(6)(B) through 2(a)(6)(C) of this rule, the owner, operator, or permittee shall be deemed to have established financial responsibility.
 - (C) If, at any time, the owner, operator, or permittee fails to meet the financial test, the owner, operator, or permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the owner, operator, or permittee no longer meets the requirements.
 - (D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the owner, operator, or permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the owner, operator, or permittee does not meet the requirements of this subdivision. The owner, operator, or permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.
 - (5) The local government guarantee option. If the local government guarantor and the owner, operator, or permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the owner, operator, or permittee shall be deemed to have established financial responsibility.
- (b) The owner, operator, or permittee of an MSWLF shall choose a financial responsibility mechanism that guarantees funds will be available to meet the corrective action requirements under 329 IAC 10-21-13. The owner, operator, or permittee shall provide

continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with 329 IAC 10-21-13 and shall include the following, as applicable:

(1) Payments into the trust fund must be made annually by the owner, operator, or permittee over half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half (½) of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

Where: RB = The most recent estimate of the required trust fund balance for corrective action (that is, the total costs that will be incurred during the second half of the corrective action period).
 CV = The current value of the trust fund.
 Y = The number of years remaining in the pay-in period.

The initial payment into the trust fund must be made no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

- (2) The surety bond must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.
- (3) The letter of credit must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.
- (4) The local government financial test must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.
- (5) The local government guarantee must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(c) An owner, operator, or permittee of an MSWLF required to undertake a corrective action program under 329 IAC 10-21-13 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under 329 IAC 10-21-13. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner, operator, or permittee shall notify the commissioner that the estimate has been placed in the operating record. The owner, operator, or permittee shall do the following:

- (1) Annually adjust the estimate for inflation until the corrective action program is completed in accordance with 329 IAC 10-21-13.
- (2) Increase the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if changes in the corrective action program or MSWLF conditions increase the maximum costs of corrective action.

The owner, operator, or permittee may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner, operator, or permittee shall notify the commissioner that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record. *(Solid Waste Management Board; 329 IAC 10-39-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1925; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3874)*

329 IAC 10-39-11 Release of financial responsibility obligations

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
 Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 11. As part of the acknowledgement of corrective action, the commissioner shall notify the owner, operator, or permittee that the owner, operator, or permittee is no longer required to maintain financial responsibility under 329 IAC 10-39-10 for corrective action once the requirements for corrective action have been fulfilled. *(Solid Waste Management Board; 329 IAC 10-39-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1926; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2238)*

ARTICLE 11. SOLID WASTE PROCESSING FACILITIES

Rule 1. General Provisions

329 IAC 11-1-1 Enforcement

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. This article shall be enforced through the provisions of IC 13-14-10, IC 13-15, or IC 13-30-3 through IC 13-30-6, or any combination thereof, as appropriate. *(Solid Waste Management Board; 329 IAC 11-1-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1926; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)*

329 IAC 11-1-2 Penalties

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Penalties for violation of this article shall be governed by IC 13-30-3 through IC 13-30-7. *(Solid Waste Management Board; 329 IAC 11-1-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1926; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)*

329 IAC 11-1-3 Reporting

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Any permittee required to monitor under this article or by any permit issued pursuant to this article, shall maintain all records of all monitoring information and monitoring activities, including:

- (1) the date, exact place, and time of the sampling or measurements;
- (2) the person(s) who performed the sampling or measurements;
- (3) the date(s) analyses were performed;
- (4) the person(s) who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of such measurements or analyses.

(b) All records of monitoring activities and results shall be retained by the permittee for five (5) years. The five (5) year period shall be extended:

- (1) automatically during the course of any unresolved litigation between the commissioner and a permittee; or
- (2) as required by the permit conditions.

(Solid Waste Management Board; 329 IAC 11-1-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1926; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-1-4 Variances

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 4. The commissioner may grant a variance from compliance with provisions of this article in accordance with the provisions of IC 13-14-8-8 through IC 13-14-8-11. *(Solid Waste Management Board; 329 IAC 11-1-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)*

329 IAC 11-1-5 Severability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. If any provision of this article, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of this article which can be given effect without the invalid provision or application. *(Solid Waste Management Board; 329 IAC 11-1-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 2. Definitions

329 IAC 11-2-1 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 1. In addition to the definitions found in IC 13-11-2, the definitions in this rule apply only to this article. *(Solid Waste Management Board; 329 IAC 11-2-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)*

329 IAC 11-2-2 “Access road” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 2. “Access road” means a road that leads to the entrance of a solid waste processing facility, normally a county, state, or federal highway. (*Solid Waste Management Board; 329 IAC 11-2-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-3 “Ash residue” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 3. “Ash residue” means all solid residue and any entrained liquids resulting from the combustion of solid waste, fossil fuel, or solid waste in combination with fossil fuel at a solid waste incinerator, including:

- (1) bottom ash;
- (2) boiler ash;
- (3) fly ash; or
- (4) solid residue of any air pollution control device used at a solid waste incinerator.

(*Solid Waste Management Board; 329 IAC 11-2-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-4 “Base flood” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 4. “Base flood” means a flood that has a one percent (1%) or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in one hundred (100) years on the average over a significantly long period. In any given one hundred (100) year interval, such a flood may not occur or more than one (1) such flood may occur. (*Solid Waste Management Board; 329 IAC 11-2-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-5 “Board” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 5. “Board” means the solid waste management board as defined in IC 13-11-2-17(e). (*Solid Waste Management Board; 329 IAC 11-2-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

329 IAC 11-2-6 “Collection container system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 6. “Collection container system” has the meaning set forth in 329 IAC 12-2-6. (*Solid Waste Management Board; 329 IAC 11-2-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-7 “Commissioner” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 7. “Commissioner” refers to the commissioner of the department created under IC 13-13-1-1. (*Solid Waste Management Board; 329 IAC 11-2-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

329 IAC 11-2-8 “Contaminant” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 8. "Contaminant" means any of the following:

- (1) Pollutant as defined in the federal Water Pollution Control Act, 33 U.S.C. 1362 as amended November 18, 1988.
- (2) Radioactive material as regulated by the Atomic Energy Act of 1954, 42 U.S.C. 2014 as amended October 24, 1992.
- (3) Solid or hazardous waste as determined by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. as effective January 1, 1989.
- (4) Hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq. as amended November 23, 1988.
- (5) Any toxic substance as determined by the Toxic Substances Control Act, 15 U.S.C. 2603 et seq. as amended October 22, 1986.
- (6) Any commingled waste containing waste as defined in subdivisions (1) through (5), from whatever source that:
 - (A) is injurious to human health, plant or animal life, or property;
 - (B) interferes unreasonably with the enjoyment of life or property; or
 - (C) violates this article.

(Solid Waste Management Board; 329 IAC 11-2-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1927; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-9 "Department" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 9. "Department" refers to the department of environmental management created under IC 13-13-1-1. *(Solid Waste Management Board; 329 IAC 11-2-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)*

329 IAC 11-2-10 "Disposal" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 10. "Disposal" means the discharge, deposit, dumping, emission, injection, spill, leak, or placement of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or any constituent of the waste is in or may enter the environment or be emitted into the air or discharged into any waters, including ground waters. *(Solid Waste Management Board; 329 IAC 11-2-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-11 "Garbage" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 11. "Garbage" means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the processing, handling, preparation, cooking, serving, or consumption of food or food materials. *(Solid Waste Management Board; 329 IAC 11-2-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-12 "Generator" or "generating facility" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 12. "Generator" or "generating facility" means any person or site, at, on, or by which one (1) or more solid wastes are generated, such as a large manufacturing plant that may have more than one (1) source of solid waste at the plant location. The term does not include hazardous waste generator as regulated by 329 IAC 3.1. *(Solid Waste Management Board; 329 IAC 11-2-12; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-13 "Grading" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 13. "Grading" means the contouring of land so that surface water flow and erosion are controlled according to a predetermined plan. *(Solid Waste Management Board; 329 IAC 11-2-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed*

Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-14 “Ground water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 14. “Ground water” means water below the land surface in the zone of saturation. *(Solid Waste Management Board; 329 IAC 11-2-14; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-15 “Hazardous waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 15. “Hazardous waste” means a solid waste or combination of solid wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) cause or significantly contribute to an increase in mortality or increase in serious, irreversible, or incapacitating reversible illness; or
- (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(Solid Waste Management Board; 329 IAC 11-2-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-15.1 “Incidental transfer” defined

Authority: IC 13-14-8; IC 13-15-2; IC 13-19-3; IC 13-20-14-9.5
Affected: IC 13-20-14-9.5

Sec. 15.1. “Incidental transfer” means the transfer of a whole waste tire at a transfer station when:

- (1) the tire arrives at the transfer station in a load of municipal solid waste; and
- (2) removing the tire would endanger persons or equipment or cause delays that result in safety problems inside the transfer station.

(Solid Waste Management Board; 329 IAC 11-2-15.1; filed Aug 25, 1997, 9:40 a.m.: 21 IR 76; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-16 “Incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 16. “Incinerator” means an engineered apparatus designed for the burning of solid waste under the effect of controls of temperature, retention time, air, and other combustion factors. *(Solid Waste Management Board; 329 IAC 11-2-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1928; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-17 “Industrial process waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 17. “Industrial process waste” means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under 329 IAC 3.1. Such waste may include, but is not limited to, waste resulting from any of the following manufacturing processes:

- (1) Electric power generation.
- (2) Fertilizer or agricultural chemicals production.
- (3) Food and related products or byproducts production.
- (4) Inorganic chemicals production.
- (5) Iron and steel manufacture or foundries.
- (6) Leather and leather products production.
- (7) Nonferrous metals manufacture or foundries.
- (8) Organic chemicals production.
- (9) Plastics and resins manufacture.

- (10) Pulp and paper industry.
- (11) Rubber and miscellaneous plastic products production.
- (12) Stone, glass, clay, and concrete products.
- (13) Textile manufacture.
- (14) Transportation equipment.
- (15) Oil and gas process and refinery wastes and disposed products.
- (16) Painting, printing, and allied industries.
- (17) Contaminated, off-specification, or outdated wholesale products.
- (18) Recycling activities and process residues.

The term does not include mining operations waste or oil and gas recovery waste. (*Solid Waste Management Board; 329 IAC 11-2-17; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-18 “Infectious waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 18. “Infectious waste” means waste that epidemiologic evidence indicates is capable of transmitting a dangerous communicable disease (as defined in 410 IAC 1-3-5). The term includes any of the following:

- (1) Pathological wastes, including tissue, organs, body parts, and blood or body fluids in liquid or semiliquid form that are removed during surgery, biopsy, or autopsy.
- (2) Biological cultures and associated biologicals.
- (3) Contaminated sharps.
- (4) Infectious agent stock and associated biologicals.
- (5) Blood and blood products in liquid or semiliquid form.
- (6) Laboratory animal carcasses, body parts, and bedding.
- (7) Wastes (as defined in 410 IAC 1-3-19).

(*Solid Waste Management Board; 329 IAC 11-2-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-19 “Infectious waste incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 19. “Infectious waste incinerator” means a solid waste incinerator that is used to burn infectious waste or mixture of infectious and noninfectious solid waste. (*Solid Waste Management Board; 329 IAC 11-2-19; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-20 “Legal description” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 20. “Legal description” means a legal description of the real property, including the county, township, range, and section numbers and, if applicable, the metes and bounds description, together with the acreage thereof. (*Solid Waste Management Board; 329 IAC 11-2-20; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-21 “Major modification” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 21. “Major modification” means any proposed change in a permitted solid waste facility that would increase the facility's permitted capacity to process solid waste by the lesser of:

- (1) more than ten percent (10%); or
- (2) five hundred thousand (500,000) cubic yards.

(*Solid Waste Management Board; 329 IAC 11-2-21; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-22 “On-site road” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 22. “On-site road” means a road for the passage of vehicles from a facility entrance to the processing area. (*Solid Waste Management Board; 329 IAC 11-2-22; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-23 “Open burning” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 23. “Open burning” means the combustion of any matter in the open or in an open dump. (*Solid Waste Management Board; 329 IAC 11-2-23; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-24 “Open dump” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 24. “Open dump” has the meaning set forth in 329 IAC 10-2-128. (*Solid Waste Management Board; 329 IAC 11-2-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1929; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-25 “Operating personnel” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 25. “Operating personnel” means persons necessary to properly operate a solid waste processing facility. (*Solid Waste Management Board; 329 IAC 11-2-25; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-26 “Permit” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 26. “Permit” means a permit, a determination related to a permit, license, registration, certificate, or other type of authorization required before construction or operation that may be issued by the commissioner under IC 13-15 or IC 13-22. (*Solid Waste Management Board; 329 IAC 11-2-26; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

329 IAC 11-2-27 “Permittee” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 27. “Permittee” means any person to whom a solid waste facility permit has been issued for the purposes of this article. (*Solid Waste Management Board; 329 IAC 11-2-27; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-28 “Person” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 28. “Person” means any of the following:

- (1) An individual.
- (2) A partnership.
- (3) A copartnership.
- (4) A firm.
- (5) A company.

- (6) A corporation.
- (7) An association.
- (8) A joint stock company.
- (9) A trust.
- (10) An estate.
- (11) A municipal corporation.
- (12) A city.
- (13) A school city.
- (14) A town.
- (15) A school town.
- (16) A school district.
- (17) A school corporation.
- (18) A county.
- (19) Any consolidated unit of government.
- (20) A political subdivision.
- (21) A solid waste management district.
- (22) A state agency.
- (23) A federal government or agency.
- (24) Any other legal entity.

(Solid Waste Management Board; 329 IAC 11-2-28; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-29 “Pollution control waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 29. “Pollution control waste” includes liquid, solid, semisolid, or gaseous waste generated as a direct or indirect result from the removal of contaminants from air, water, or land that may include, but is not limited to, such waste as water and wastewater treatment sludges, baghouse dust, scrubber sludges, chemical spills, or remedial activity clean-up wastes. *(Solid Waste Management Board; 329 IAC 11-2-29; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-30 “Processing” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 30. “Processing” means:

- (1) the method, system, or other handling of solid waste so as to change its chemical, biological, or physical form;
- (2) to render solid waste more amenable for disposal or recovery of materials or energy; or
- (3) the transfer of solid waste materials excluding the transportation of solid waste.

(Solid Waste Management Board; 329 IAC 11-2-30; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-31 “Recovery” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 31. “Recovery” means obtaining materials or energy for commercial or industrial use from solid waste or hazardous waste. *(Solid Waste Management Board; 329 IAC 11-2-31; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-32 “Registered professional engineer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 32. “Registered professional engineer” means a professional engineer registered by the state of Indiana under IC 25-31. *(Solid Waste Management Board; 329 IAC 11-2-32; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1930; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-33 “Residue” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 33. “Residue” means any solid waste remaining after incineration or processing that is not completely combusted or recovered, including any of the following:

- (1) Ash.
- (2) Ceramics.
- (3) Glass.
- (4) Metal.
- (5) Other inorganic substances or organic substances.

(Solid Waste Management Board; 329 IAC 11-2-33; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-34 “Resource recovery” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 34. “Resource recovery” means the processing of solid waste into commercially valuable materials or energy. *(Solid Waste Management Board; 329 IAC 11-2-34; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-35 “Salvaging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 35. “Salvaging” means the controlled and organized removal of materials from solid waste for utilization. *(Solid Waste Management Board; 329 IAC 11-2-35; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-36 “Scavenging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 36. “Scavenging” means the uncontrolled and unauthorized removal of materials from solid waste. *(Solid Waste Management Board; 329 IAC 11-2-36; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-37 “Site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 37. “Site” means the land area on which the permitted facility is situated. *(Solid Waste Management Board; 329 IAC 11-2-37; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-38 “Sludge” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 38. “Sludge” means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant. *(Solid Waste Management Board; 329 IAC 11-2-38; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-39 “Solid waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 39. (a) "Solid waste" means any:

- (1) garbage;
- (2) refuse;
- (3) sludge from a wastewater treatment plant;
- (4) sludge from a water supply treatment plant;
- (5) sludge from an air pollution control facility; or
- (6) other discarded material;

including ash residue, commercial waste, construction/demolition waste, hazardous waste, household waste, infectious waste, liquid waste, special waste, municipal solid waste, regulated hazardous waste, residential and nonresidential waste, and any solid, liquid, semisolid, or contained gaseous material.

(b) The term does not include:

- (1) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, 33 U.S.C. 1342 as amended February 4, 1987;
- (2) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, 42 U.S.C. 2014 et seq. as amended October 24, 1992;
- (3) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or
- (4) vegetative matter at composting facilities registered under IC 13-20-10.

(Solid Waste Management Board; 329 IAC 11-2-39; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)

329 IAC 11-2-40 "Solid waste facility" or "facility" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 40. "Solid waste facility" or "facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for processing, storing in conjunction with processing or disposal, or disposing of solid waste and may consist of several processing, storage, or disposal operational units, for example, one (1) or more landfills, surface impoundments, or combinations thereof. *(Solid Waste Management Board; 329 IAC 11-2-40; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-41 "Solid waste land disposal facility" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 41. "Solid waste land disposal facility" has the meaning set forth in 329 IAC 10-2-176. *(Solid Waste Management Board; 329 IAC 11-2-41; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1932; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-42 "Solid waste management" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 42. "Solid waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste. *(Solid Waste Management Board; 329 IAC 11-2-42; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1932; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-43 "Solid waste processing facility" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 43. "Solid waste processing facility" means a solid waste facility upon which is located a solid waste incinerator, transfer station, solid waste baler, solid waste shredder, resource recovery system, composting facility, or garbage grinding facility. *(Solid Waste Management Board; 329 IAC 11-2-43; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1932; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-44 “Special waste” defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 44. “Special waste” has the meaning as set forth in 329 IAC 10-2-179. *(Solid Waste Management Board; 329 IAC 11-2-44; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1932; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1729, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-2-45 “Surface impoundment” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 45. (a) “Surface impoundment” means a facility or part of a facility that:

- (1) is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials;
 - (2) holds or is designed to hold an accumulation of liquid wastes or wastes containing free liquids; and
 - (3) is not an injection well.
- (b) Examples of surface impoundments may include the following:
- (1) Holding, storage, settling, and aeration pits.
 - (2) Holding, storage, settling, and aeration ponds.
 - (3) Holding, storage, settling, and aeration lagoons.

(Solid Waste Management Board; 329 IAC 11-2-45; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1932; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-46 “Surface water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 46. “Surface water” means water present on the surface of the earth, including:

- (1) streams;
- (2) lakes;
- (3) ponds;
- (4) rivers;
- (5) swamps;
- (6) marshes; or
- (7) rainwater present on the earth.

(Solid Waste Management Board; 329 IAC 11-2-46; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-47 “Transfer station” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 47. (a) “Transfer station” means a facility at which solid waste is transferred from a vehicle or container to another vehicle or container for transportation or from one (1) mode of transportation to another, including the transfer of a trailer, container, or waste from rail to road transportation.

(b) The term does not include the following:

- (1) Collection container for solid waste.
- (2) The transfer of solid waste at the point of generation.
- (3) A recycling facility that receives distinct and recognizable solid waste items that do not require substantial further processing, and are delivered back to manufacturing companies and reused. Based on a calendar quarter, a recycling facility must have not more than ten percent (10%), by volume of the solid waste that passes through the facility ultimately taken for final disposal.
- (4) Curbside satellite collection vehicles used for collecting residential waste, which are small motorized vehicles, or the equivalent, with bins or containers that once full are deposited into larger solid waste collection vehicles or containers.

(Solid Waste Management Board; 329 IAC 11-2-47; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-2-48 “Vector” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 48. “Vector” means any animal capable of harboring and transmitting microorganisms from one (1) animal to another or to a human. (*Solid Waste Management Board; 329 IAC 11-2-48; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-49 “Washout” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 49. “Washout” means the carrying away of solid waste by waters of the base flood. (*Solid Waste Management Board; 329 IAC 11-2-49; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-50 “Water pollution” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 50. “Water pollution” means:

- (1) actual or threatened alteration of the physical, thermal, chemical, biological, bacteriological, or radioactive properties of any waters; or
- (2) the discharge or threatened discharge of any contaminant into any waters that does or can create a nuisance or render the waters harmful, detrimental, or injurious to:
 - (A) public health, safety, or welfare;
 - (B) domestic, commercial, industrial, agricultural, recreational, or other legitimate uses; or
 - (C) livestock, wild animals, birds, fish, or aquatic life.

(*Solid Waste Management Board; 329 IAC 11-2-50; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-2-51 “Waters” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 51. (a) “Waters” means the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state.

(b) The term does not include any:

- (1) private pond; or
- (2) off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

(*Solid Waste Management Board; 329 IAC 11-2-51; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 3. Exclusions**329 IAC 11-3-1 Exclusions; general**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

- (1) Disposing of only uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.
- (2) Land application activities regulated by 327 IAC 6.1 and 327 IAC 7.
- (3) Confined feeding control activities regulated by IC 13-18-10.
- (4) Wastewater discharge activities regulated by 327 IAC 5.
- (5) Processing, except for incineration, in which the waste, other than tires, has been segregated from the general solid waste stream prior to arrival at the processing site.
- (6) Processing, except for incineration, of solid waste that takes place at the generating facility.

- (7) Processing and disposal of uncontaminated and untreated natural growth solid waste, including tree limbs, stumps, leaves, and grass clippings.
- (8) Disposal of sawdust that is derived from processing untreated natural wood.
- (9) The disposal of coal ash, transported by water, into an ash pond that has received a water pollution control facility construction permit under 327 IAC 3.
- (10) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivisions (9) and (11).
- (11) The disposal of coal ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.
- (12) Uses and disposal of coal waste as exempted from regulation in IC 13-19-3-3.
- (13) The legitimate use of iron and steelmaking slags, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (15).
- (14) The legitimate use of foundry sand which has been demonstrated as suitable for restricted waste site Type III under the provisions of 329 IAC 10-9, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (15).
- (15) Other uses of solid waste may be approved by the commissioner if the commissioner determines them to be legitimate uses that do not pose a threat to public health and the environment.

(Solid Waste Management Board; 329 IAC 11-3-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)

329 IAC 11-3-2 Exclusion; hazardous waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Hazardous wastes are regulated by and shall be treated, stored, and disposed of in accordance with 329 IAC 3.1. Hazardous waste that is regulated by 329 IAC 3.1 is not subject to the provisions of this article.

(b) No hazardous waste which is regulated by 329 IAC 3.1 shall be disposed at any solid waste facility regulated under this article.

(c) As used in this article, "hazardous waste that is regulated by 329 IAC 3.1" does not include hazardous waste that is generated in quantities less than one hundred (100) kilograms per month and is, therefore, excluded from regulation under the hazardous waste management article, 329 IAC 3.1. Such small quantities of hazardous waste shall be disposed of in accordance with 329 IAC 10.

(d) Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility. *(Solid Waste Management Board; 329 IAC 11-3-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1934; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 4. Previously Permitted Facilities Closed Prior to Effective Date of this Article; Responsibilities

329 IAC 11-4-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. This rule applies to solid waste processing facilities permitted under 329 IAC 1.5, which was repealed in 1989, which have closed prior to the effective date of this article. *(Solid Waste Management Board; 329 IAC 11-4-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1934; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-4-2 Maintenance, monitoring, or correcting nuisance; permittee responsibility

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Closed facilities must continue to be monitored and maintained by the facility permittee in accordance with the permit granted to the facility at the time the facility was closed.

(b) The owner or operator of a closed facility or the owner of real estate upon which a closed facility is located shall be responsible for correcting and controlling any nuisance conditions occurring at the facility. *(Solid Waste Management Board; 329 IAC 11-4-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1934; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-4-3 Elimination of threats to human health or the environment

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. The owner or operator of a closed facility or the owner of real estate upon which a closed facility is located shall be responsible for eliminating any threat to human health or the environment. (*Solid Waste Management Board; 329 IAC 11-4-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1934; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-4-4 Remedial action

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 4. The commissioner may proceed under IC 13-25-4 and rules adopted under IC 13-25-4-7, which require the owner or operator of a closed facility or the owner of real estate upon which a closed facility is located, or any other responsible party under IC 13-25-4, to perform remedial action, including the installation and monitoring of ground water monitoring wells or other devices, if the commissioner determines that the closed facility is a threat to human health or the environment, due to a release of a hazardous substance from the facility into the environment. (*Solid Waste Management Board; 329 IAC 11-4-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

Rule 5. Application of this Article to Existing Permittees; Transition Provisions**329 IAC 11-5-1 Applicability**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. This rule applies to all solid waste processing facilities that have construction or operating permits in effect on the effective date of this article. (*Solid Waste Management Board; 329 IAC 11-5-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-5-2 Existing construction permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Construction permits in effect on the effective date of this article must serve as solid waste permits under 329 IAC 11-9, 329 IAC 11-10, and 329 IAC 11-11. To begin operation, facilities for which only construction permits, but not operating permits, have been issued prior to the effective date of this article must submit an application for a solid waste facility permit renewal at least ninety (90) days before expiration of the construction permit. Operation of the facility must not begin until a solid waste facility permit has been issued under this article. (*Solid Waste Management Board; 329 IAC 11-5-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-5-3 Existing operating permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. Operating permits in effect on the effective date of this article must serve as solid waste permits under 329 IAC 11-9, 329 IAC 11-10, and 329 IAC 11-11 until such time as a permit renewal is either issued or denied by the commissioner under 329 IAC 11-9, 329 IAC 11-10, and 329 IAC 11-11, provided there is compliance with section 5(a) of this rule. (*Solid Waste Management Board; 329 IAC 11-5-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-5-4 Operating requirements for facilities with operating permits in effect on the effective date of this article

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) Plans and permit conditions approved prior to the effective date of this article must continue in effect until permit renewal unless the permit is reopened for cause under 329 IAC 11-9, 329 IAC 11-10, and 329 IAC 11-11.

(b) Except as provided in subsection (a), the operational standards of 329 IAC 11-13, 329 IAC 11-14, and 329 IAC 11-15 for solid waste processing facilities must apply to solid waste processing facilities with operating permits in effect on the effective

date of this article. (*Solid Waste Management Board; 329 IAC 11-5-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-5-5 Renewal of permit by existing permittee

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. (a) To continue operation, facilities affected by this rule must submit an application for renewal under 329 IAC 11-9, 329 IAC 11-10, and 329 IAC 11-11 at least one hundred twenty (120) days prior to the expiration of their operating permit.

(b) The renewal permit issued to a facility affected by this rule must identify the site classification as established in 329 IAC 11-8 to reflect the restrictions on waste accepted at the facility under the existing permit.

(c) The operational standards of 329 IAC 11-13, 329 IAC 11-14, and 329 IAC 11-15 for solid waste processing facilities must apply to solid waste processing facilities with renewal permits issued under this article. (*Solid Waste Management Board; 329 IAC 11-5-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 6. Waste Determination Requirements

329 IAC 11-6-1 Requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 1. A generator of special waste must meet the waste determination requirements of 329 IAC 10-7.1. (*Solid Waste Management Board; 329 IAC 11-6-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1935; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1729, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 7. Special Waste

329 IAC 11-7-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 1. After the effective date of this article, no person may dispose, cause, or allow to be disposed, special waste, except as provided in this rule, 329 IAC 10-5, or 329 IAC 10-8.1. (*Solid Waste Management Board; 329 IAC 11-7-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1729, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-7-2 Special waste management

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 2. (a) Special waste may be processed at a processing facility holding a valid permit under this article where specifically authorized by the facility permit.

(b) Special waste must be accepted at a solid waste processing facility in accordance with this rule and 329 IAC 10-8.1.

(c) Special waste approved for processing at a solid waste processing facility must be handled and disposed of as specified by the commissioner.

(d) Permit by rule incinerators regulated under 329 IAC 11-19-2 may accept special waste if the facility demonstrates to the commissioner that compliance with 326 IAC 4-2-2 will be maintained after receipt of the waste.

(e) Solid waste processing facility residues may be special waste and if the residues are special waste, the residues must be disposed in accordance with this rule and 329 IAC 10-8.1. (*Solid Waste Management Board; 329 IAC 11-7-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 8. Solid Waste Processing Facility Classifications and Waste Criteria

329 IAC 11-8-1 Types of facilities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The following classifications must be used for the purpose of defining site requirements and permissible wastes to be received for all solid waste processing facilities:

- (1) Solid waste processing facility.
- (2) Incinerator.

(Solid Waste Management Board; 329 IAC 11-8-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-8-2 Processing facilities waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
 Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 2. Solid waste processing facilities may accept all solid waste regulated under this article. Special waste may be accepted at solid waste processing facilities in accordance with 329 IAC 11-7 and 329 IAC 10-8.1. *(Solid Waste Management Board; 329 IAC 11-8-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-8-3 Incinerators waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
 Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 3. Incinerators may accept all solid waste regulated under this article except special waste must be accepted at an incinerator in accordance with 329 IAC 11-7 and 329 IAC 10-8.1. *(Solid Waste Management Board; 329 IAC 11-8-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 9. Application Procedure for All Solid Waste Processing Facilities

329 IAC 11-9-1 Permit requirement

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 13-30-6; IC 36-9-30-35

Sec. 1. (a) Unless excluded in 329 IAC 11-3, any person who constructs or operates a solid waste processing facility as defined under 329 IAC 11-2-43 shall have a solid waste processing facility permit under this article.

(b) The owner of the facility is responsible for applying for and obtaining a permit. The owner of the land upon which the facility is located also shall sign the application form acknowledging the land owner's responsibility in accordance with 329 IAC 11-11-4.

(c) In the event that, after the permit application is submitted but prior to the issuance of the permit, there is any change that renders the information in the application incorrect, the applicant shall notify the commissioner of the change within fifteen (15) days and submit corrected information within a reasonable period of time.

(d) It is grounds to deny a permit, including a renewal permit, to any applicant if such applicant has been convicted under IC 13-30-6 or IC 36-9-30-35, or if such applicant's previous permit to operate under this article or the previous articles, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, has been revoked by the commissioner under IC 13-15-7-1. *(Solid Waste Management Board; 329 IAC 11-9-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1126, eff Jan 1, 2002)*

329 IAC 11-9-2 New permit application and major modification application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 4-21.5-3-4; IC 4-21.5-3-5; IC 13-30-2; IC 36-7-4; IC 36-9-30

Sec. 2. (a) A complete application for a solid waste processing facility permit must consist of the following information submitted to the commissioner in a format specified by the department on forms provided by the department:

- (1) The name and address of the applicant or applicants.
- (2) The name and address of the property owner or owners.
- (3) The name, address, and location of the facility.
- (4) The legal description as defined in 329 IAC 11-2-20 for the following:
 - (A) The area for which ownership will be established as required in subdivision (10).
 - (B) The area upon which the facility is located.

(C) Sufficient documentation must be provided to verify that the facility is located on property owned or leased by the permittee. Documentation must include a map of the legal description for these areas certified by a registered land surveyor.

(5) Facility information, including the following:

- (A) A description of the type of operation.
- (B) The planned life of the facility in years.
- (C) The expected volume of waste to be received in cubic yards per day and tons per day.
- (D) The type of waste to be received.

(6) Signatures and certification statements in compliance with section 3 of this rule.

(7) Detailed plans and design specifications as required by this section, 329 IAC 11-12, 329 IAC 11-17, and 329 IAC 11-18.

(8) Closure plan under 329 IAC 11-16.

(9) Closure financial responsibility under 329 IAC 11-16. A description of the financial instrument that will be used to achieve compliance with financial responsibility provisions of 329 IAC 10-39. These documents need not be executed and delivered to the commissioner until after the review of the technical application and until after the applicant receives notice of such requirement from the commissioner in accordance with 329 IAC 11-11-1(c)(1).

(10) Documents necessary to establish ownership or other tenancy of, including an option to purchase, the real estate upon which the facility to be permitted is located, including a certified copy of the deed to the subject real estate showing ownership in the person identified as the owner in the application, or the deed and evidence satisfactory to the commissioner that ownership will be transferred to the owner prior to operation of the facility.

(11) In order to assist the commissioner in identifying persons entitled to notice in accordance with IC 4-21.5-3-4 and IC 4-21.5-3-5, the name and address of all owners or last taxpayers of record of property located within one-half (½) mile of the site boundaries of a proposed solid waste processing facility.

(12) Certification verification from the zoning authority, or the county commissioners if there is no zoning authority, that proper zoning approvals have been obtained, and the following documents:

- (A) A copy of the zoning requirements, if any, for solid waste facilities in the area where the facility is to be located.
- (B) A copy of the improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site if a solid waste facility is permitted by the zoning ordinance in the area where the facility is to be located.
- (C) A copy of the amendment or amendments to the zone maps incorporated by reference into the zoning ordinance under IC 36-7-4-602(c) if a change in the zone maps is required for the area where the facility is to be located.
- (D) A copy of the amendment or amendments to the zoning ordinance adopted under IC 36-7-4-602 if such amendment is required for the area where the facility is to be located.
- (E) A copy of the variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-918.1 through IC 36-7-4-921 if such approval is required for the area where the facility is to be located.
- (F) The status of any appeals of any zoning determination as described in clauses (B) through (E) and, if none pending, the date by which such appeal must be initiated.

(b) The completed application must be submitted to the commissioner in triplicate, by registered or certified mail or in person.

For all items larger than eleven (11) inches by seventeen (17) inches, one (1) of the three (3) required copies must be submitted on reproducible mylar plastic.

(c) Confidentiality of information submitted in the permit application may be requested in accordance with 329 IAC 6.1.

(d) All corporations must submit a certificate of existence signed by the secretary of state.

(e) Fees must be submitted with the application in accordance with IC 13-20-21.

(f) An application for a solid waste processing facility permit must be accompanied by the plans or documents specified in this rule. Design drawings and specifications must be certified by a registered professional engineer. Design drawings must be properly titled.

(g) The following general documentation is required:

(1) A United States Geological Survey (USGS) topographic quadrangle map or maps, seven and one-half (7½) minute, or equivalent, to include all areas within two (2) miles of the proposed facility with property boundaries and the proposed processing facility clearly delineated.

(2) Documentation of the base flood elevation within one-fourth (¼) mile of the proposed facility. The following documentation will be accepted:

- (A) A letter from the Indiana department of natural resources.
- (B) A national flood insurance program map.

(h) Applications must include a plot plan or plans of the facility, including the following:

- (1) Access control measures such as fences, gates, or natural barriers.
- (2) A method of screening.
- (3) The general layout of the equipment.
- (4) The traffic pattern.

- (5) Road access.
- (6) Surface water drainage.

Roads and buildings, on and within one-half (½) mile of the facility, must be shown. The plot plans and drawings required by this section must be drawn to scale. A bar scale must be shown on the plans to indicate the scale if size changes occur.

(i) Applications must include drawings of all buildings and all structures used for the storage, processing, loading, and unloading of solid waste. Drawings must include the type of construction, construction materials, layout, and dimensions for the storage, processing, loading, and unloading areas. Drawings must also include sanitary facilities, plumbing, sewer connections, and utilities. All liquid waste streams generated by the facility must be shown on these drawings.

(j) Applications must include a narrative describing the proposed operation, including the following:

- (1) The anticipated type, quantity, and source of solid waste to be processed at the facility, including population and the area to be served. Include any analyses already completed on the waste and describe the sampling and analysis methods and equipment used. Describe any proposed sampling of waste streams, including analytical methods to be used.
- (2) A detailed description of all processes used in the handling, sorting, processing, and transportation of the waste, including a waste flow diagram for all waste streams and residues. Flow rates coinciding with the waste flow diagram must be specified.
- (3) A description of the proposed testing, treatment, and disposition of all waste resulting from the facility. Proposed testing must be adequate to provide for proper treatment and disposal of wastes.
- (4) Specifications for the base of all areas where wastes will be stored or handled.
- (5) Names and locations of solid waste land disposal facilities anticipated to receive waste and residue from the facility.
- (6) A contingency plan outlining the method or methods of waste disposal to be implemented if the facility is unable to operate or process solid waste in accordance with the approved operating plan for more than twenty-four (24) continuous hours. Include design capacity of waste storage areas and normal percent of capacity used during routine operations. Specify the maximum inventory of wastes in storage or treatment that will occur at any time during the life of the facility.
- (7) Procedures for controlling dust, noise, odors, fire, explosions, vectors, litter, and handling of bulky waste or other materials unsuitable for the proposed process.
- (8) Daily cleanup procedures for solid waste storage, processing, loading, and unloading areas.
- (9) Sanitary toilet facilities for employees.
- (10) Proposed operating hours for the facility.

(Solid Waste Management Board; 329 IAC 11-9-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Nov 4, 1999, 10:19 a.m.: 23 IR 562; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1126, eff Jan 1, 2002; errata filed Feb 6, 2002, 10:50 a.m.: 25 IR 1906)

329 IAC 11-9-3 Signatories to permit application and reports

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) All permit applications must be signed as follows:

- (1) For a corporation, by a responsible corporate officer.
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.
- (3) For a municipality or state, by the executive of the unit.
- (4) For a federal or other public agency, by either a principal executive officer or ranking elected official or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency that covers the facility to be permitted.

(b) All reports required by permits and other information requested by or on behalf of the commissioner must be signed by the permittee, or by a duly authorized representative of that person. A person is presumed to be an authorized representative if the conditions in any of the following are met:

- (1) The information is submitted on behalf of a person described in subsection (a).
- (2) The information is submitted in response to a requirement of the permit or in response to a request for information directed to a person described in subsection (a).
- (3) Written authorization is submitted to the commissioner, by an individual identified in subsection (a) that identifies a specific individual or position as authorized to submit information.

(c) If an authorization under subsection (b)(3) is no longer accurate, a new authorization satisfying the requirements of subsection (b)(3) must be submitted to the commissioner prior to or together with any reports of information to be signed by the authorized representative.

(d) Any person signing a document under subsection (a) or (b) shall make the certification, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations. I further certify that I am authorized to submit this information.”. (*Solid Waste Management Board; 329 IAC 11-9-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1938; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1128, eff Jan 1, 2002*)

329 IAC 11-9-4 Renewal permit application and minor modification application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 4-21.5-3-4; IC 4-21.5-3-5; IC 13-15-3-1; IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 4. (a) Renewal applications must be submitted at least one hundred twenty (120) days prior to the expiration date of the permit.

(b) A complete application for a solid waste processing facility permit renewal must consist of the following information, submitted on forms provided by the commissioner:

- (1) The name and address of the applicant.
- (2) The name and address of the property owner or owners.
- (3) The name, address, and location of the facility.
- (4) The operation permit number of the facility.
- (5) The legal description of the facility location as defined in 329 IAC 11-2-20.
- (6) Facility information, including the following:
 - (A) A description of the type of operation.
 - (B) The volume of waste received at the facility in cubic yards per day or tons per day.
 - (C) The type of waste received at the site.
- (7) Signatures and certification statements in compliance with section 3 of this rule.
- (8) In order to assist the commissioner in identifying persons entitled to notice:
 - (A) in accordance with IC 4-21.5-3-4 and IC 4-21.5-3-5, the name and address of all owners or last taxpayers of record of property located adjacent to the facility boundary of the solid waste processing facility; and
 - (B) in accordance with IC 13-15-3-1(a), the county executive of a county that is affected by the permit application, the executive of a city that is affected by the permit application, and the executive of a town council of a town that is affected by the permit application.

(c) Fees must be submitted with the application in accordance with IC 13-20-21. (*Solid Waste Management Board; 329 IAC 11-9-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1939; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1128, eff Jan 1, 2002*)

329 IAC 11-9-5 Demonstration and determination of need

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-20-1-1; IC 13-21-5; IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 5. (a) This section applies to all permits for new solid waste facilities or major modifications of permits issued after March 20, 1990, except those facilities exempt under IC 13-20-1-1.

(b) In accordance with subsection (a), and in addition to other permit application requirements outlined in this rule, the following are also required:

- (1) A description of the anticipated area that would be served by the facility as indicated by the following:
 - (A) Solid waste management district or districts if established.
 - (B) County, counties, or portions thereof.
 - (C) County, counties, and state if the area includes portions outside of Indiana.
- (2) A description of the existing solid waste management facilities that serve the same described area.
- (3) A description of the need that would be fulfilled by constructing the proposed facility as follows:
 - (A) For facilities proposed in areas with approved district solid waste management plans, a description of the need identified in the district solid waste management plan required under IC 13-21-5.
 - (B) For facilities proposed in areas without approved district solid waste management plans, a description of need for the proposed area to be served.
- (4) A description of recycling, composting, or other activities that the facility would operate within the proposed area of service.
- (5) Additional information as requested by the commissioner.

(c) The commissioner shall review the submitted application and accompanying materials in accordance with this rule. If it is determined that there is not a local or regional need in Indiana for the solid waste management facility, the commissioner shall deny the permit application. (*Solid Waste Management Board; 329 IAC 11-9-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1939; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1129, eff Jan 1, 2002*)

Rule 10. Action on Permit and Renewal Permit Applications

329 IAC 11-10-1 Action on permit and renewal permit applications

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) Time periods for determination on permit applications are under IC 13-15-4.

(b) Procedures for application reviews are under IC 13-15-4.

(c) Remedies are under IC 13-15-4. (*Solid Waste Management Board; 329 IAC 11-10-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1939; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)**Rule 11. Permit Issuance and Miscellaneous Provisions****329 IAC 11-11-1 Issuance procedures; original permits**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-15-3; IC 13-15-5-1; IC 13-15-5-3; IC 13-15-6; IC 13-20-8; IC 13-30-2; IC 36-9-30

Sec. 1. (a) After the commissioner determines that the application is complete, the commissioner shall comply with the procedural requirements of IC 13-15-3, IC 13-15-5-1, IC 13-15-5-3, and IC 13-15-6-1 through IC 13-15-6-5 that are relevant to an application for an original permit for solid waste incinerator under IC 13-20-8.

(b) If the commissioner determines that the permit application meets the requirements of this article and that the facility will be constructed and operated in accordance with the requirements of this article, the permit must be granted. The commissioner may impose such conditions in a permit as may be necessary to comply with the requirements of this article, IC 13, and IC 36-9-30.

(c) The notice of the granting of a permit must state that the permit will not become effective until:

(1) all financial responsibility documents have been executed and delivered to the commissioner in the form and amount specified; and

(2) any real estate transfers necessary to vest legal title of the real estate upon which the permitted activity is to occur in the name of the owner listed on the application have been completed, executed, and recorded and documents evidencing such transfer have been delivered to the commissioner.

(d) All permits must be issued in the name of the owner of the facility.

(e) Notwithstanding subsection (c)(2), a variance granted under IC 13-14-8 must not be transferred to another person without independent proof of undue hardship or burden by the person seeking the transfer. (*Solid Waste Management Board; 329 IAC 11-11-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1129, eff Jan 1, 2002*)**329 IAC 11-11-2 Issuance procedures; renewal permits**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-20-8; IC 13-30-2; IC 36-9-30

Sec. 2. (a) After the commissioner concludes that the renewal application is complete, the following is required:

(1) The commissioner shall comply with the procedural requirements of IC 13 relevant to an application for a renewal permit for a solid waste incinerator regulated under IC 13-20-8.

(2) The commissioner shall review the application to determine whether the facility or operation is in compliance with the plans and specifications as approved in its existing permit. The commissioner may request clarification or supplementation of information submitted in support of the renewal application. The commissioner shall evaluate the facility's compliance record under:

(A) the operational requirements of 329 IAC 11-7, 329 IAC 11-13, 329 IAC 11-14, 329 IAC 11-15, 329 IAC 11-19, and 329 IAC 11-20 as appropriate; and

(B) any prior or existing permit conditions.

(b) After the provisions of subsection (a) have been accomplished, if the commissioner determines that the facility will be in compliance with the requirements of this article and the permit conditions, including any additions to or revisions of the conditions in the existing permit, the commissioner shall grant renewal of the permit.

(c) All renewal permits must be issued in the name of the owner of the facility. (*Solid Waste Management Board; 329 IAC 11-11-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1130, eff Jan 1, 2002*)**329 IAC 11-11-3 Duration of permits**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. A permit, including a renewal permit, must be issued for a fixed term not to exceed five (5) years. A permit may be

modified or revoked prior to the expiration of the term for cause, as provided in section 6 of this rule, or in accordance with conditions set forth in the permit. (*Solid Waste Management Board; 329 IAC 11-11-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1130, eff Jan 1, 2002*)

329 IAC 11-11-4 Effect of permit issuance

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) The issuance of a permit does not:

- (1) convey any property right of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other state or local requirements.

(b) The owner or operator of a solid waste facility and the owner or owners of the land upon which a solid waste facility is located shall be liable for any environmental harm caused by the facility. (*Solid Waste Management Board; 329 IAC 11-11-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1130, eff Jan 1, 2002*)

329 IAC 11-11-5 Transferability of permits

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-15-7; IC 13-30-2; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) A permit may be transferred to another person by the permittee, without the need for a new permit or modification or revocation of the existing permit being required, if:

- (1) the permittee notifies the commissioner of the proposed transfer at least sixty (60) days before the proposed date of transfer on forms provided by the commissioner;
- (2) a written agreement containing a specific date of transfer of permit responsibility is submitted to the commissioner;
- (3) the transferee has not been convicted under IC 13-30-6 or IC 36-9-30-35 and has not had a permit to operate under this article, or previous articles, 329 IAC 1.5, which was repealed in 1989, or 329 IAC 2, which was repealed in 1996, revoked by the commissioner under IC 13-15-7;
- (4) the transferee provides proof of financial responsibility as provided in 329 IAC 10-39 if required by the commissioner; and
- (5) the transferee provides proof that it is, or will be, the owner of the facility.

(b) The transfer will be effective on the specific date of transfer provided by the permittee unless the commissioner notifies the permittee and the transferee that the transfer will be denied.

(c) Notwithstanding the transfer of a permit, a variance must not be transferred to another person. (*Solid Waste Management Board; 329 IAC 11-11-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1940; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2047; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1130, eff Jan 1, 2002*)

329 IAC 11-11-6 Permit revocation and modification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 4-21.5-3-7; IC 13-30-2; IC 36-9-30

Sec. 6. (a) The commissioner may revoke or modify a permit issued under this article if cause exists under IC 13-15-7-1 and may request an updated application if necessary. When a permit is modified, only the conditions subject to modifications are reopened and subject to review under IC 13-15-7 and IC 4-21.5-3-7. If a permit is revoked, the entire permit is reopened and subject to revision, and if the permit is reissued, it may be for a new term.

(b) If the facility is located in an area not suitable for the operation of a solid waste processing facility as specified under this article, the commissioner shall consider this issue as a sufficient basis for denying the modification or for revoking the permit unless the permittee demonstrates to the commissioner that continued use of the facility will not pose a threat to human health or the environment.

(c) Except as provided under 329 IAC 11-3-4, to request a change in the facility permit, the permittee shall request that the commissioner modify the permit. The permittee shall submit the requested modification and rationale for such modification. If the commissioner determines that the requested modification is consistent with the standards established in this article, the commissioner shall grant the modification. Only the conditions subject to modification are reopened. The commissioner shall give notice of the determination on the modification in accordance with IC 13-15-7 and IC 4-21.5-3-7. (*Solid Waste Management Board; 329 IAC 11-11-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1941; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1131, eff Jan 1, 2002*)

Rule 12. Solid Waste Processing Facilities; Operation Approval and Preoperational Requirements**329 IAC 11-12-1 Operation approval**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A newly constructed solid waste processing facility or incinerator that holds a valid permit under this article must not accept solid waste until it has complied with the applicable preoperational requirements of this rule.

(b) The operator of the facility shall notify the commissioner in writing when all the applicable preoperational requirements have been completed. Unless the commissioner denies operational approval within fourteen (14) days of receipt of such notice, the facility may begin to accept solid waste in accordance with its permit and the applicable operational requirements of 329 IAC 11-7, 329 IAC 11-13, 329 IAC 11-14, 329 IAC 11-15, 329 IAC 11-19, and 329 IAC 11-20. (*Solid Waste Management Board; 329 IAC 11-12-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1941; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-12-2 Preoperational requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Before beginning operation, a solid waste processing facility must complete the initial facility development outlined in the permitted plans and specifications. Initial facility development includes:

- (1) construction of buildings or structures and on-site roads;
- (2) installation of equipment for storage, processing, and handling of solid waste; and
- (3) installation of access control, sanitary facilities, signs, communication devices, and utilities.

(*Solid Waste Management Board; 329 IAC 11-12-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1941; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 13. Solid Waste Processing Facilities; Operational Requirements**329 IAC 11-13-1 Access control**

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. Access to all solid waste processing facilities must be allowed only when operating personnel are on duty and such access must be controlled by the use of gates, fences, and other appropriate means. (*Solid Waste Management Board; 329 IAC 11-13-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1941; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-13-2 On-site roads

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. An all-weather road, which is passable by all vehicles utilizing the solid waste processing facility, must be provided. (*Solid Waste Management Board; 329 IAC 11-13-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-13-3 Signs

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. For all facilities, except incinerators processing waste generated on-site, each point of access from a public road must have a sign of at least sixteen (16) square feet in area identifying the operation and indicating the schedule of fees, hours of operation, and solid waste facility permit number. (*Solid Waste Management Board; 329 IAC 11-13-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-13-4 Sanitation

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 4. (a) Solid waste must be confined to the designated storage, processing, loading, and unloading areas of the processing facility. The processing facility and adjacent areas must be maintained clean and litter free.

(b) Solid waste may not be stored overnight at the processing facility except in permitted storage areas or in enclosed transporting units.

(c) The solid waste processing facility must be cleaned as necessary to prevent a nuisance or public health hazard.

(d) Residues from solid waste processing facilities and incinerators are special wastes and must be disposed of in accordance with 329 IAC 10-8.1.

(e) Salvaging, if undertaken, must not interfere with the facility operation or create unsightliness, nuisance, or health hazard.

(f) At a minimum, all salvage materials must be stored in buildings or transportable containers while awaiting removal from the facility. No alternative methods of storing salvage materials may be used without obtaining prior approval from the commissioner. Approval may be granted at the request of the permittee, if the permittee can demonstrate that the alternative method will provide a comparable level of environmental protection. (*Solid Waste Management Board; 329 IAC 11-13-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-13-5 Safety requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. (a) Vectors, dust, odors, and noise must be controlled at all times at the facility so that they do not constitute a nuisance or a health hazard.

(b) Equipment must be provided to abate or control fires. Open burning of solid waste is prohibited.

(c) Telephone or radio communication must be provided on-site.

(d) A first aid kit must be available on-site.

(e) Scavenging must be prohibited. (*Solid Waste Management Board; 329 IAC 11-13-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-13-6 Records and reports

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 6. (a) The following must be furnished upon request and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:

(1) All solid waste processing facility records and reports required by this section, 329 IAC 11-14, and 329 IAC 11-15.

(2) All test results of residues generated by the facility.

(3) All special waste certifications and disposal notifications required by 329 IAC 11-7 and 329 IAC 10-8.1 if applicable.

(b) Owners or operators of solid waste processing facilities shall maintain the records and reports required in subsection (a)(2) and (a)(3) until certification of post-closure is deemed acceptable if applicable. (*Solid Waste Management Board; 329 IAC 11-13-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-13-7 Use of contingency plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. If the facility is unable to operate or process solid waste in accordance with its approved operating plan for more than a continuous twenty-four (24) hour period, the contingency plan required in 329 IAC 11-9-2(j)(6) must be implemented. (*Solid Waste Management Board; 329 IAC 11-13-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 14. Solid Waste Processing Facilities; Quarterly Tonnage Reports

329 IAC 11-14-1 Quarterly reports

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 1. (a) A quarterly tonnage report of solid waste received at the solid waste processing facility must be submitted to the commissioner by the owner, operator, or permittee of that facility.

(b) The report required by subsection (a) must be submitted:

(1) For all facilities required to report, except on-site incinerators, on or before the fifteenth day of the month immediately following the end of the calendar quarter being reported. If the submittal date falls on a Saturday, Sunday, or national or state legal holiday, the submittal date will be the next day that is not a Saturday, Sunday, or holiday.

(2) For on-site incinerators, annually, on or before the fifteenth of January. If the submittal date falls on a Saturday, Sunday, or national or state legal holiday, the submittal date will be the next day that is not a Saturday, Sunday, or holiday.

(3) For purposes of this subsection, "on-site" means a facility that accepts solid waste generated within the facility boundary and may also accept solid waste generated at various locations owned by the same parent company that owns the facility. The term does not include an incinerator that is on-site and permitted by rule under 329 IAC 11-19-2.

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the permitted solid waste processing facility that is open to accept solid waste for processing unless one (1) of the following applies:

(1) The owner, operator, or permittee of the solid waste processing facility has:

(A) ceased accepting solid waste for a period of at least one (1) calendar quarter; and

(B) sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 11-16 if applicable.

(2) The solid waste processing facility is not required to obtain a permit under this article.

(3) The solid waste processing facility is only required to obtain a permit by rule under 329 IAC 11-19-2(a).

(d) The solid waste hauler shall provide the owner, operator, or permittee of the solid waste processing facility with the origin or origins of the solid waste delivered to the solid waste processing facility. The hauler shall estimate, by percent, the type and amount of solid waste originating in each county and state, or country if other than the United States, if the load contains solid waste from more than one (1) county, state, or country.

(e) The owner, operator, or permittee of the solid waste processing facility shall submit the quarterly tonnage report, required under subsection (a) as follows:

(1) On the most current paper or electronic report form prescribed by the department. The owner, operator, or permittee may obtain a quarterly tonnage report form from the department. The form:

(A) may be photocopied or electronically copied by the owner, operator, or permittee of the solid waste processing facility; and

(B) in its most current format, may be computer generated by the owner, operator, or permittee of the solid waste processing facility.

(2) The original of each paper report must be signed by the facility owner, operator, or permittee as certification of report accuracy.

(3) Each report must be accurate, legible, and complete.

(4) Each electronic report must contain a unique identification code assigned to the permitted facility owner, operator, or permittee by the commissioner as certification of report accuracy and authenticity.

(5) The type and usage of electronic reporting formats other than described in subdivision (1) must be approved by the commissioner.

(6) The paper report and any approved format required by this subsection must include at least the following information:

(A) The weight in total tons of solid waste received at the facility for that calendar quarter compiled by waste type and origin.

(B) The county and state in which the solid waste originated. If the solid waste originated outside of the United States, the country must be designated. The origin must be provided to the solid waste processing facility by the solid waste hauler as described in subsection (d).

(C) The type, total weight in tons, and final destination of solid waste received at and transported off-site from the solid waste processing facility for reuse, recycling or disposal.

(D) Waste types include the following:

(i) Municipal solid waste.

(ii) Construction/demolition debris.

(iii) Pollution control waste.

(iv) Other solid waste.

(f) If the owner, operator, or permittee of the solid waste processing facility ascertains that there is an error or errors in any report previously submitted as required by subsection (a), a revised report reflecting the correct information must be submitted in the same format as the original submission. The revised report must:

(1) have "Amended" written or typed at the top of each page of the resubmitted report; and

(2) be submitted before or with the submission of the next quarterly tonnage report after ascertaining the error.

(g) Copies of reports required by this section must be maintained on-site by the facility owner, operator, or permittee for three (3) years after the submittal date of the report and be made available during normal operating hours for on-site inspection and

photocopying by a representative of the department.

(h) The facility owner, operator, or permittee shall maintain the documentation on-site to substantiate reports required by this section. Such documentation must be maintained by the facility owner, operator, or permittee for three (3) years after the report's submittal date and be made available during normal operating hours for on-site inspection and photocopying by a representative of the department.

(i) Failure to submit reports and copies as required by this section, or maintain copies of reports and records as required by this section, constitutes an operational violation under 329 IAC 11-1-1.

(j) A facility required to report by subsection (a), which does not operate weighing scales for weighing solid waste, must use the most applicable of the following conversion factors to determine the weight of municipal solid waste from the volume of municipal solid waste:

(1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.

(2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste.

(3) One (1) cubic yard of baled solid waste equals one (1) ton of solid waste.

(k) The owner, operator, or permittee of any solid waste processing facility accepting construction/demolition debris or pollution control waste, required to report under subsection (a), that does not operate weighing scales for weighing solid waste, shall use accepted engineering practices, production information, or other methods approved by the commissioner to estimate the weight of these solid waste types received at the facility. (*Solid Waste Management Board; 329 IAC 11-14-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1943; readopted filed Nov 16, 2001, 4:43 p.m.: 25 IR 1131, eff Jan 1, 2002*)

Rule 15. Miscellaneous Requirements Concerning Solid Waste Management

329 IAC 11-15-1 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-1-2-23; IC 36-9-30

Sec. 1. (a) In addition to the definitions found in 329 IAC 11-2 and IC 13-11-2, the definitions in this section apply throughout this rule.

(b) "Broker" means a person who is in the business of making arrangements for the transportation of municipal waste that was generated by another person. The term does not include an owner or operator of a solid waste processing facility who makes arrangements for transportation of municipal waste from their own facility.

(c) "Manifest" means the form used for identifying the quantity, origin, operators involved in a shipment, and destination of municipal solid waste during its transportation.

(d) "Municipal waste" refers to any garbage, refuse, industrial lunchroom or office waste, and other material resulting from the operation of residential, municipal, commercial, or institutional establishments, and from community activities. The term does not include the following:

(1) Special waste as defined in 329 IAC 11-2-44.

(2) Hazardous waste regulated under IC 13-22 or under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. 6901 et seq. in effect on January 1, 1990.

(3) Infectious waste as defined in 329 IAC 11-2-18.

(4) Wastes that result from the combustion of coal and that are referred to in IC 13-19-3-3.

(5) Materials that are being transported to a facility for reprocessing or reuse. As used in this subdivision, "reprocessing or reuse" does not include:

(A) incineration; or

(B) placement in a landfill.

(e) "Operator" means a corporation, a partnership, a business association, a unit (as defined in IC 36-1-2-23), or an individual who is a sole proprietor that is one (1) of the following:

(1) A broker.

(2) A person who manages the activities of a transfer station that receives municipal waste.

(3) A transporter.

(f) "Solid waste processing facility" means a facility at which at least one (1) of the following is located:

(1) Solid waste incinerator.

(2) Transfer station.

(3) Solid waste shredder.

(4) Solid waste baler.

(5) Resource recovery system.

(6) Composting facility.

(7) Garbage grinding system.

The term does not include a facility or an operation that generates solid waste.

(g) "Transporter" means a person who is in the business of transporting municipal solid waste.

(h) "Waste transfer activities" means the participation by a:

(1) broker or a transporter who is a resident of Indiana or not a resident of Indiana; or

(2) transfer station that receives municipal waste located inside Indiana or outside Indiana in the collection or transportation of municipal waste for disposal or incineration in Indiana.

(Solid Waste Management Board; 329 IAC 11-15-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1944; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)

329 IAC 11-15-2 Municipal waste transportation manifests

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Shipments of municipal waste from solid waste processing facilities must be accompanied by a municipal waste transportation manifest. *(Solid Waste Management Board; 329 IAC 11-15-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1944; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-15-3 Manifests required information

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. The manifest required under section 2 of this rule must include the following information:

(1) The amount in tons or pounds of municipal waste transported in the vehicle.

(2) The name and address of the solid waste processing facility from which the municipal waste is transported in the vehicle.

(3) The destination of the municipal waste.

(4) The name and business address of the transporter of the municipal waste.

(5) The acknowledgment numbers issued by the department under IC 13-20-6-5(2) to the transfer station, transporter, and broker listed on the manifest.

(6) The name and address of the broker involved in the shipment if applicable.

(7) The date of the shipment and the date of receipt at the final disposal facility.

(Solid Waste Management Board; 329 IAC 11-15-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)

329 IAC 11-15-4 Responsibilities of the owners or operators of the solid waste processing facilities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) The owner or an employee of the solid waste processing facility from which municipal waste is to be transported shall prepare the manifest required under section 2 of this rule and deliver it to the operator of the vehicle, who shall carry it while transporting the municipal waste. The transporter shall present the manifest to the owner or an employee of the facility to which the municipal waste is transported.

(b) The owner or an employee of the facility to which the municipal waste is transported shall retain each manifest for one (1) year and send one (1) copy of each manifest to the department within three (3) months after receiving the manifest. The manifests must be retained at the facility and must be made available to the department staff upon request. *(Solid Waste Management Board; 329 IAC 11-15-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-15-5 Prohibition on accepting municipal waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. (a) Prior to accepting a shipment of municipal waste from a transfer station located inside or outside of Indiana, a solid waste processing facility must receive a copy of the manifest and must review the manifest to determine whether the items listed under section 3 of this rule are included on the manifest.

(b) A solid waste processing facility must not knowingly accept a shipment of municipal waste from a transfer station located inside or outside of Indiana if:

(1) the municipal waste is not accompanied by a manifest that contains the information required under section 3 of this rule;

or

(2) the solid waste processing facility has received notice from the department that the commissioner has issued an order under IC 13-20-6-3 or IC 13-20-6-4 that suspends the waste transfer activities within Indiana of the transfer station or operator that is listed on the manifest accompanying the shipment of municipal waste.

(c) Subsection (b)(2) does not apply unless the department has sent notice by certified mail, return receipt requested, to the solid waste processing facility that the commissioner has suspended the waste transfer activities of the transfer station or operator listed on the manifest. The notice must contain the following:

- (1) The name of the operator or transfer station subject to the commissioner's order to suspend waste transfer activities.
- (2) The date on which the waste transfer activities are suspended under the commissioner's order.
- (3) The acknowledgement number issued to the operator under IC 13-20-6-5(2) if applicable.
- (4) The location of the transfer station if the order applies to a transfer station.

(d) Subsection (b)(2) does not apply after the department has notified a suspended transfer station or operator that they may resume waste transfer activities in Indiana. The notice to the formerly suspended transfer station or operator must contain the date in which waste transfer activities may resume. A copy of this notice must be sent by the department via certified mail, return receipt requested, to each solid waste processing facility that was sent the applicable notice under subsection (c). (*Solid Waste Management Board; 329 IAC 11-15-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

329 IAC 11-15-6 Violations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) A solid waste processing facility that knowingly accepts a shipment of municipal waste in contravention of section 5(b) of this rule violates this rule.

(b) Acceptance of a shipment of municipal waste is not a violation of this rule if:

- (1) the solid waste processing facility did not receive a notice under section 5(c) of this rule that the department has suspended the waste transfer activities of a transfer station or operator listed on the manifest; or
- (2) the solid waste processing facility did not receive a notice under section 5(d) of this rule that the department has allowed the waste transfer activities of a transfer station or operator listed on the manifest to resume.

(*Solid Waste Management Board; 329 IAC 11-15-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1945; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 16. Solid Waste Processing Facilities; Closure and Post-Closure Requirements

329 IAC 11-16-1 Closure plans and closure financial responsibility

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. A closure plan similar to that provided for in 329 IAC 10-22, 329 IAC 10-30, or 329 IAC 10-37 and closure financial responsibility similar to that provided for in 329 IAC 10-39 may be required by the commissioner for solid waste processing facilities and incinerators where the proposed solid waste storage or handling practices may pose a threat to human health and the environment if closure of the facility is not accomplished in accordance with approved plans or permits. (*Solid Waste Management Board; 329 IAC 11-16-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1946; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-16-2 Financial responsibility and post-closure requirements for transfer stations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) A person who applies for a permit to operate a transfer station shall establish financial responsibility for the costs of closure and post-closure monitoring and maintenance of the transfer station.

(b) The financial responsibility must cover the costs of the following:

- (1) Properly closing the transfer station in an environmentally sound manner.
- (2) Monitoring and maintaining the transfer station site during post-closure.

(c) Financial responsibility may be established through the mechanisms under 329 IAC 10-39.

(d) The amount of financial responsibility a person shall establish for a transfer station must be the greater of one (1) of the following:

- (1) Four thousand dollars (\$4,000) for each acre or part of an acre covered by the transfer station.

(2) An amount determined by the commissioner that is sufficient to close the transfer station in a manner that minimizes the need for further maintenance, and provides reasonable, foreseeable, and necessary maintenance during post-closure.

(e) The amount of financial responsibility a person shall establish for a transfer station must provide assurance of proper post-closure maintenance for one (1) year after the transfer station has ceased operations. (*Solid Waste Management Board; 329 IAC 11-16-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1946; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 17. Solid Waste Incinerators; Additional Application Requirements

329 IAC 11-17-1 Permit application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. In addition to the items required under 329 IAC 11-9, applications for incinerators required to submit an application under 329 IAC 11-19 must include the following information:

- (1) A description of the proposed incinerator or incinerators and all auxiliary equipment, including the following:
 - (A) Specifications for the incinerator, auxiliary burners, boilers, heat recovery units, air pollution control equipment, waste feed (charging) equipment, and all residue handling equipment.
 - (B) Design drawings that show the dimensions of all of the equipment listed in clause (A), as well as the locations of the auxiliary fuel burners, temperature, pressure, oxygen, carbon monoxide, carbon dioxide, and gas flow rate sensing equipment.
 - (C) Details of the type, composition, quantity, and storage of all auxiliary fuels to be used.
 - (D) A description of stack heights and the temperature and flow rate of the stack gas.
 - (E) Calculations of the minimum residence time of the combustion gases in the incinerator.
 - (F) A discussion of the residence time of the waste in the combustion chamber and the percent burnout achieved.
 - (G) A description of efficiencies of all control equipment, including critical operating parameters affecting that efficiency.
 - (H) An estimate of emission rates of acid gases, sulfur dioxide, nitrogen oxides, hydrocarbons, particulates, heavy metals, and products of incomplete combustion.
 - (I) A narrative comparing the emissions of the proposed incinerator with those of other proven and operating incinerator designs.
 - (J) A description of the operating characteristics of the incineration facility, including a description of safety, testing, and maintenance procedures. This must include a discussion of emergency shutdown procedures for system malfunction, a maintenance schedule, and emissions testing and reporting.
 - (K) A discussion of the procedures to prevent the receipt and subsequent combustion of hazardous waste as regulated under IC 13-22 and 329 IAC 3.1.
 - (L) A discussion of the plan for sampling and analysis of all incineration and control equipment residues. This must include a discussion of the site for residue disposal.
- (2) Based on the size, design, and location of the facility and the potential health and environmental hazards posed by the proposed incinerator, the commissioner may require the submission of:
 - (A) a preoperational emission test plan that includes a detailed description of the methods for sampling and analyzing stack emissions and incinerator and control equipment residues; and
 - (B) a detailed health risk assessment that utilizes the results of the emissions tests.

(*Solid Waste Management Board; 329 IAC 11-17-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1946; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741*)

Rule 18. Solid Waste Incinerators; Additional Preoperational Requirements

329 IAC 11-18-1 Preoperational requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) Before beginning operation, a solid waste incinerator must comply with 329 IAC 11-12-2 and must submit written evidence of approval by the office of air management or its designated local air pollution control agency for construction and operation of a solid waste incinerator.

- (b) Incinerators that the commissioner requires to perform preoperational emission tests must comply with the following:
 - (1) Those incinerators that the commissioner requires to perform preoperational emissions testing will be allowed to operate for a period of seven hundred twenty (720) hours in order to bring the incinerator to a point of operational readiness, and to

perform the tests as specified in their permit to construct and operate the facility. An extension of up to an additional seven hundred twenty (720) hours may be granted by the commissioner with proper justification. No further operation of the incinerator will occur until the permittee has obtained written acknowledgement from the commissioner that the tests have shown compliance with all emissions limitations specified in the permits, and has complied with all other preoperational requirements.

(2) The facility must notify the commissioner of the schedule for the emissions testing at least thirty (30) days prior to the start of the testing.

(3) All emissions testing must be conducted under the supervision of a representative of the commissioner.

(4) Results of the preoperational test must contain a certification that the test was performed in compliance with all appropriate rules and the approved emissions test plan.

(Solid Waste Management Board; 329 IAC 11-18-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1947; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 19. Solid Waste Incinerators; Additional Operational Requirements

329 IAC 11-19-1 Applicability and notification

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. All solid waste incinerators and infectious waste incinerators must file a notification as a solid waste incinerator facility within ninety (90) days of the effective date of this article. Notification must include the following information:

(1) The name and address of the facility.

(2) The name and address of the owner or operator of the facility if different from that stated in subdivision (1).

(3) A description of the incineration facility, including design capacity.

(4) A certification by the owner or operator that the facility is in compliance with the requirements specified in 329 IAC 11-13-4 and 329 IAC 11-13-5.

(5) A statement by the owner or operator of an infectious waste incinerator indicating whether the facility is in compliance or able to comply with the requirements of 329 IAC 11-20-1.

(Solid Waste Management Board; 329 IAC 11-19-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1947; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-19-2 Permit by rule

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 2. (a) All solid waste incinerators with a design capacity less than ten (10) tons per day, and infectious waste incinerators with a design capacity of less than seven (7) tons per day, will be deemed to have a permit under this article provided they comply with the following:

(1) File a notification as a solid waste incinerator facility as required by section 1 of this rule.

(2) Comply with 329 IAC 11-13-4 and 329 IAC 11-13-5.

(3) Infectious waste incinerators with a design capacity of less than seven (7) tons per day must also comply with the requirements of 329 IAC 11-20-1.

(4) Operate in compliance with all applicable air pollution control standards and regulations and all conditions set forth in the permit.

(5) Notify the office of solid and hazardous waste management and all appropriate local government officials within twenty-four (24) hours after the permittee learns of the release, violation, shutdown, or damage of the following:

(A) Any release of a contaminant in a quantity in excess of that allowed by permit conditions and appropriate regulations.

(B) Any violation of operating requirements established in the permit.

(C) Any unscheduled shutdown of the incinerator or associated equipment.

(D) Any damage to the incinerator or associated equipment that could, if not repaired, result in a release of a contaminant in a quantity exceeding a control level established in the permit or applicable regulations.

(6) The incinerator must dispose of residues in accordance with 329 IAC 11-7 and 329 IAC 10-8.1 at a solid waste facility with a valid permit under 329 IAC 10.

(b) All solid waste incinerators with a design capacity greater than or equal to ten (10) tons per day, and less than or equal to thirty (30) tons per day, and infectious waste incinerators with a design capacity of greater than or equal to seven (7) tons per day, and less than or equal to thirty (30) tons per day, will be deemed to have a permit under this article provided they comply with the

following:

- (1) File a notification as a solid waste incinerator facility as required by section 1 of this rule.
- (2) Submit an application for a solid waste processing facility permit, complying with 329 IAC 11-9, 329 IAC 11-16, and 329 IAC 11-17 within ninety (90) days of the notification required by section 1 of this rule.
- (3) Solid waste incinerators must comply with the requirements of 329 IAC 11-7 and 329 IAC 11-13 through 329 IAC 11-15.
- (4) Infectious waste incinerators that burn infectious waste must comply with the requirements of 329 IAC 11-7, 329 IAC 11-13 through 329 IAC 11-15, and 329 IAC 11-20.
- (5) The incinerator must operate in compliance with all applicable air pollution control standards and regulations and all conditions set forth in the permit.
- (6) The permit holder shall notify the office of solid and hazardous waste management and all appropriate local government officials within twenty-four (24) hours after the permittee learns of the release, violation, shutdown, or damage of the following:

- (A) Any release of a contaminant in a quantity in excess of that allowed by permit conditions and appropriate regulations.
- (B) Any violation of operating requirements established in the permit.
- (C) Any unscheduled shutdown of the incinerator or associated equipment.
- (D) Any damage to the incinerator or associated equipment that could, if unrepaired, result in a release of a contaminant in a quantity exceeding a control level established in the permit or applicable regulations.

(c) Permits granted under subsection (b) must remain in effect until such time as the commissioner takes action on the application submitted in compliance with 329 IAC 11-9, 329 IAC 11-16, and 329 IAC 11-17. (*Solid Waste Management Board; 329 IAC 11-19-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1947; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1731, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 11-19-3 Solid waste incinerators 10 tons per day or greater; infectious waste incinerators seven tons per day or greater; operational requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 3. The following operational requirements apply to solid waste incinerators with a design capacity of ten (10) tons per day or greater and to infectious waste incinerators with a design capacity of seven (7) tons per day or greater:

- (1) The incinerator must not operate without a valid permit under this article and a valid permit from the office of air management or its designated local air pollution control agency and comply with the operational requirements of 329 IAC 11-7 and 329 IAC 11-13 through 329 IAC 11-15 and all permit conditions.
- (2) The incinerator must dispose of residues in accordance with 329 IAC 11-7 and 329 IAC 10-8.1 at a solid waste facility with a valid permit under 329 IAC 10.
- (3) The incinerator must operate in compliance with all applicable air pollution control standards and regulations and all conditions set forth in the permit.
- (4) The permittee shall notify the office of solid and hazardous waste management and all appropriate local government officials within twenty-four (24) hours after the permittee learns of the release, violation, shutdown, or damage of the following:

- (A) Any release of a contaminant in a quantity in excess of that allowed by permit conditions and appropriate regulations.
- (B) Any violation of operating requirements established in the permit.
- (C) Any unscheduled shutdown of the incinerator or associated equipment.
- (D) Any damage to the incinerator or associated equipment that could, if unrepaired, result in a release of a contaminant in a quantity exceeding a control level established in the permit or applicable regulations.

(*Solid Waste Management Board; 329 IAC 11-19-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1948; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1731, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 20. Infectious Waste Incinerators; Additional Operational Requirements

329 IAC 11-20-1 Operational requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-18-1; IC 13-18-20; IC 25-31; IC 36-9-30

Sec. 1. (a) The following additional operational requirements apply to all infectious waste incinerators:

(1) A solid waste incinerator that is used to burn infectious waste, except an existing incinerator equipped with an afterburner and achieving zero (0) opacity, must be a multiple chamber incinerator. Infectious waste incinerators must maintain a temperature of one thousand eight hundred degrees Fahrenheit (1,800°F) with a residence time of one (1) second in the secondary chamber.

(2) Any solid waste incinerator that is used to burn antineoplastic agents must maintain a temperature of one thousand eight hundred degrees Fahrenheit (1,800°F) with a residence time of one and one-half (1½) seconds in the secondary chamber. As used in this rule, “antineoplastic agents” means chemotherapy drugs, or compounds used in the treatment of cancer, which are not subject to regulation under 329 IAC 3.1. Containers or other items containing residues of antineoplastic agents must not be considered antineoplastic agents.

(3) Infectious waste incinerators constructed after January 1, 1988, must be equipped with an automatic mechanical loading device, and an interlock system must be provided to prevent charging until the secondary chamber exit temperature of one thousand eight hundred degrees Fahrenheit (1,800°F) is established.

(4) Batch incinerators, fully loaded while cold and never opened until the burn cycle is complete, must incorporate a lockout system that will prevent ignition of the waste until the exit temperature of the secondary chamber or the afterburner reaches one thousand eight hundred degrees Fahrenheit (1,800°F) and prevent recharging until the combustion and burndown cycles are complete.

(5) No waste must be charged to an incinerator other than a batch incinerator until the secondary chamber or afterburner has achieved a minimum temperature of one thousand eight hundred degrees Fahrenheit (1,800°F). The secondary chamber or afterburner must achieve and maintain the required minimum temperature for fifteen (15) minutes before charging begins.

(6) During shutdowns, the secondary chamber or afterburner minimum temperature of one thousand eight hundred degrees Fahrenheit (1,800°F) is to be maintained using auxiliary burners until the wastes are completely combusted and the burndown cycle is complete.

(7) Residue from an infectious waste incinerator must be disposed in accordance with 329 IAC 11-7 and 329 IAC 10-8.1.

(b) All infectious waste incinerators that are not in compliance or not able to comply with the requirements of this rule must submit a detailed timetable for the modification of the facility necessary to bring the unit into compliance. This timetable must be submitted within one hundred eighty (180) days of the effective date of this article.

(c) All infectious waste incinerators must be in compliance with this rule within eighteen (18) months of the effective date of this article unless a written extension has been granted by the commissioner. *(Solid Waste Management Board; 329 IAC 11-20-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1948; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1732, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 21. Transfer Stations

329 IAC 11-21-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 1. (a) Except for section 9 of this rule, this rule applies to all transfer stations that engage in municipal waste transfer activities as defined in IC 13-11-2-254 regardless of whether the transfer station is located in Indiana or elsewhere.

(b) In addition to complying with this rule, transfer stations located in Indiana must also comply with 329 IAC 11-7, 329 IAC 11-13 through 329 IAC 11-15, and 329 IAC 11-16-2.

(c) Except as provided in subsection (a), section 2 of this rule does not apply to a transfer station located outside Indiana if the transfer station is located in a jurisdiction that has a transfer station inspection program similar to that created by this rule and the department has made a determination that the standards of such inspection program, as constituted and as applied, are substantially equivalent to the standards set forth in this rule.

(d) The department shall:

- (1) maintain a list of jurisdictions qualifying for the exception in subsection (c);
- (2) publish that list from time to time in the Indiana Register; and
- (3) provide a copy of the list to any party upon request and upon payment of the cost of providing a copy of the list.

(e) If the owner or operator of a transfer station located outside Indiana believes that the jurisdiction in which the transfer station is located should qualify for the exception in subsection (c), but the jurisdiction is not on the list maintained by the department under subsection (d), the operator may request that the department include the jurisdiction on the list. The department shall then:

- (1) promptly make a determination whether the jurisdiction qualifies for the exception in subsection (c);
- (2) either include or exclude the jurisdiction on the list in accordance with its determination; and
- (3) inform the owner or operator of its determination.

(Solid Waste Management Board; 329 IAC 11-21-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1949; readopted filed Jan 10, 2001, 3:25

p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)

329 IAC 11-21-2 Inspections

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 2. (a) The commissioner or any designated agent of the department, including a third party contractor, upon presentation of proper credentials shall have authority to enter onto transfer station property during the normal business hours of the transfer station and inspect the facility for purposes of assessing compliance with this rule, 329 IAC 11-7, and 329 IAC 11-13 through 329 IAC 11-15.

(b) The department shall recover costs associated with the inspection of any transfer station. The associated costs must include inspection and travel costs. Recovery of costs for inspections of transfer stations located in this state must be covered by the annual operation fee required in IC 13-20-21. Cost recovery for any other transfer station must occur through an annual billing for the actual costs incurred by the department for inspections of that transfer station conducted during the previous calendar year, but must not exceed the dollar amount of the annual operation fee set forth in IC 13-20-21 that is required to be paid by transfer stations located in Indiana, plus the amount by which actual travel costs incurred in inspecting the transfer station exceed the highest travel cost incurred by the department during the calendar year for any single inspection of a transfer station located in Indiana.

(c) As used in this rule, "travel cost" includes any reimbursement for the following:

- (1) Mileage.
- (2) Fares paid for air or ground transportation.
- (3) Rental car fees.

(4) Where reasonably required, meals and lodging, including any applicable taxes or gratuities.

(Solid Waste Management Board; 329 IAC 11-21-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741)

329 IAC 11-21-3 Permits required

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 3. All transfer stations, other than those excluded under 329 IAC 11-2-47, that haul or ship municipal waste to an Indiana solid waste facility must hold a valid permit under this article if located in Indiana or hold a valid permit or applicable authorization issued by the appropriate governmental agency or agencies, if any, in other states, territories, or nations. *(Solid Waste Management Board; 329 IAC 11-21-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-21-4 Monitoring of incoming municipal waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 4. (a) Incoming municipal waste must be monitored daily by transfer station employees. The monitoring must be conducted by personnel who are able to recognize the visual indications that:

- (1) special waste as defined by 329 IAC 11-2-44;
- (2) hazardous waste regulated by 329 IAC 3.1; and
- (3) infectious waste as defined by 329 IAC 11-2-18;

may be present in the municipal waste observed.

(b) The monitoring may be accomplished by either of the following methods:

- (1) Conducting, on a daily basis, a minimum of two (2) random inspections that must consist of a visual observation of all off-loaded municipal waste prior to processing.
- (2) An overview of the municipal waste on an ongoing basis by facility personnel.

(Solid Waste Management Board; 329 IAC 11-21-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-21-5 Record keeping

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 5. (a) Random inspections conducted under section 4(b)(1) of this rule must be recorded in a format established by the department.

(b) A facility conducting overview inspections of the incoming municipal waste under section 4(b)(2) of this rule must only record events in which special waste, hazardous waste, or infectious waste is found. Records of such events must be in a format established by the department.

(c) Inspection records must be maintained on-site and available for review by department personnel for a period of one (1) year from the date of the inspection or event. *(Solid Waste Management Board; 329 IAC 11-21-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-21-6 Reporting

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 6. Transfer stations that are transporting and disposing municipal waste at disposal facilities in Indiana on or after the effective date of this rule, must submit to the office of solid waste management by January 31 of each year an annual report, in a format established by the department, which identifies any inspection that detected any asbestos, special waste, hazardous waste, or infectious waste at the facility and its final disposition. The report must include the following:

- (1) Name of facility.
- (2) Address of facility.
- (3) Permit number of facility.
- (4) Inspection date.
- (5) Name of person conducting each inspection.
- (6) Type of waste found and how it was handled, including final disposition.
- (7) Name and address of generator of waste found during an inspection if known.

(Solid Waste Management Board; 329 IAC 11-21-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-21-7 Training

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 7. The transfer station employee responsible for conducting the random inspections or constant overview required in section 4 of this rule shall be able to recognize the visual indications that special waste, hazardous waste, and infectious waste may be present in the municipal waste observed. *(Solid Waste Management Board; 329 IAC 11-21-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1951; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 11-21-8 General operating requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 8. All transfer stations must be operated in a manner that minimizes the inclusion of liquids and vectors into the municipal waste shipped from the transfer station. Such management practices include, but are not limited to, the following:

- (1) All facility floors must be maintained so as to prevent standing water within the facility structure. All drainage and liquids originating from:
 - (A) storage, handling, and processing municipal waste;
 - (B) cleaning floors; or
 - (C) wash-out water from a municipal waste vehicle;

must be properly directed to a sanitary sewer, a holding tank constructed and operated in accordance with any applicable local approvals, or the equivalent of a sanitary sewer or holding tank.

(2) The facility tipping floor must be cleaned by wash-down to prevent odors and other nuisance conditions with all residuals being removed and disposed of properly.

(3) Any municipal waste that is stored overnight at the facility, except nonputrescible waste that has been segregated for recycling, must be removed from the site the following operating day except for holidays and weekends. Any municipal waste stored overnight must be stored in a manner to promote vector control.

(4) Any hazardous waste, infectious waste, or special waste found at a transfer station must be managed in accordance with the applicable laws.

(Solid Waste Management Board; 329 IAC 11-21-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1951; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-21-9 General operating requirements for Indiana transfer stations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 9. The following operating conditions apply to all Indiana transfer stations that hold, or are required to hold, a valid permit under this article:

- (1) Transfer stations that operate by discharging municipal waste directly from one (1) vehicle into a below the floor opening must have truck wheel curbs or an equivalent backup safety device or procedure.
- (2) Municipal waste that has been segregated and designated as recycled material must be stored in clearly identified containers or permitted areas and maintained in a safe, sanitary, and orderly manner. A record of the type and quantity of municipal waste shipped off-site for reuse or recycling must be maintained.
- (3) Wastewater liquids and drainage that is collected in a holding tank must be emptied as necessary and properly disposed of whenever necessary to prevent overflow of the holding tank.
- (4) An up-to-date copy of the plans and specifications approved by the department in granting the permit must be maintained on-site.

(Solid Waste Management Board; 329 IAC 11-21-9; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1951; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-21-10 Infectious waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-254; IC 13-30-6-7

Sec. 10. The following conditions apply to all Indiana transfer stations that hold a valid permit under this article and are authorized to accept segregated infectious waste:

- (1) Infectious waste must be stored in a manner that preserves the integrity of containers and is not conducive to rapid microbial growth and putrefaction. The maximum duration for storage or containment of infectious waste must be limited to seven (7) days unless prior written approval is granted by the department.
- (2) Storage and containment of infectious waste must be:
 - (A) in a secure, vector-free, and dry area separate from other solid waste at the facility; and
 - (B) stored in such a manner and location that eliminates the possibility of exposure to the environment, facility personnel, and public.

Infectious waste must not be mixed with, or come into contact with, other solid waste. In addition, storage areas must protect infectious waste from the elements, be ventilated to the outdoors, be accessible only to authorized persons, and be marked with prominent warning signs. The warning signs must include the nationally recognized biohazard symbol and be easily read from a distance of twenty-five (25) feet. Outside storage areas containing infectious waste must be locked to prevent unauthorized access.

- (3) Infectious waste received by the facility must be packaged and labeled in accordance with 410 IAC 1-3 and such packaging and labeling must be maintained by the facility.
- (4) Containers used to contain other containers of infectious waste must be marked with prominent warning signs or conspicuously labeled with the biohazard symbol or the word "INFECTIOUS".
- (5) In addition to this section, infectious waste must be labeled and packaged in accordance with applicable United States Department of Transportation regulations.
- (6) Infectious waste must be transported and delivered to a facility that:
 - (A) holds a valid permit under this article and is authorized in writing to accept and treat such waste; or
 - (B) is permitted by the appropriate governmental agency or agencies if located in another state, territory, or nation.
- (7) Reusable containers for infectious waste must be thoroughly washed and decontaminated each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by using disposable liners, bags, or other devices that are removed with the infectious waste. Reusable containers used for the storage of infectious waste must be disinfected before they are used for the storage or containment of any other solid waste or for other purposes.

(Solid Waste Management Board; 329 IAC 11-21-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1951; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 11-21-11 Incidental transfer of small amounts of whole waste tires

Authority: IC 13-14-8; IC 13-15-2; IC 13-19-3; IC 13-20-14-9.5

Affected: IC 13-20-14-9.5

Sec. 11. (a) IC 13-20-14-9.5 requires the removal of whole waste tires from municipal solid waste, as defined at 329 IAC 10-

2-115, that is transferred at a transfer station, except as provided for in this section. The incidental transfer of small amounts of whole waste tires at a transfer station is allowed if the owner, operator, or permittee of that transfer station complies with one (1) of the following options:

- (1) The numeric standard described in subsection (b).
- (2) A procedure that meets the criteria in subsection (c).

(b) The numeric standard for incidental transfer of whole waste tires is no more than one (1) visible whole waste tire for each two hundred fifty (250) tons of municipal solid waste, as defined at 329 IAC 10-2-115, or no more than two (2) tires per day for transfer stations that transfer less than two hundred fifty (250) tons of waste per day.

(c) In lieu of complying with the numeric standard in subsection (b), an owner, operator, or permittee of a transfer station must develop and follow a written procedure. This procedure must:

- (1) be kept at the transfer station;
- (2) be designed to minimize the transfer of whole waste tires by ensuring that those tires that do not meet the definition of incidental transfer at 329 IAC 11-2-15.1 are removed from the municipal solid waste;
- (3) designate by position and describe the duties of the person who is responsible for minimizing transfer of whole waste tires;
- (4) provide clear instructions to transfer station employees who handle waste tires and haulers for handling whole waste tires;
- (5) contain a system for identifying haulers who deliver whole waste tires to the transfer station and for notifying those haulers that the disposal of whole waste tires is prohibited;
- (6) provide for proper storage and disposal or recycling of tires removed from municipal solid waste; and
- (7) document reduction in the numbers of whole waste tires incidentally transferred at that transfer station.

(Solid Waste Management Board; 329 IAC 11-21-11; filed Aug 25, 1997, 9:40 a.m.: 21 IR 76; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

ARTICLE 12. SOLID WASTE MANAGEMENT ACTIVITY REGISTRATION

Rule 1. General Provisions

329 IAC 12-1-1 Enforcement

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 1. This article shall be enforced through the provisions of IC 13-14-10, IC 13-15, IC 13-20-2, or IC 13-30-3, or any combination thereof as appropriate. *(Solid Waste Management Board; 329 IAC 12-1-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 12-1-2 Penalties

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Penalties for violation of this article shall be governed by IC 13-30-4 through IC 13-30-6 and IC 13-30-8. *(Solid Waste Management Board; 329 IAC 12-1-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 12-1-3 Reporting

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
 Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) Any permittee required to monitor under this article or by any permit issued pursuant to this article, shall maintain all records of all monitoring information and monitoring activities, including:

- (1) the date, exact place, and time of the sampling or measurements;
- (2) the person or persons who performed the sampling or measurements;
- (3) the date or dates analyses were performed;
- (4) the person or persons who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of such measurements or analyses.

(b) All records of monitoring activities and results shall be retained by the permittee for five (5) years. The five (5) year period shall be extended:

- (1) automatically during the course of any unresolved litigation between the commissioner and a permittee; or

(2) as required by the permit conditions.

(Solid Waste Management Board; 329 IAC 12-1-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-1-4 Variances

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. The commissioner may grant a variance from compliance with provisions of this article in accordance with the provisions of IC 13-14-8-8 through IC 13-14-8-11. *(Solid Waste Management Board; 329 IAC 12-1-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 12-1-5 Severability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. If any provision of this article, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of this article which can be given effect without the invalid provision or application. *(Solid Waste Management Board; 329 IAC 12-1-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 2. Definitions

329 IAC 12-2-1 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 1. In addition to the definitions found in IC 13-11-2, the definitions in this rule apply only to this article. *(Solid Waste Management Board; 329 IAC 12-2-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-2 "Access road" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 2. "Access road" means a road that leads to the entrance of a solid waste management activity, normally a county, state, or federal highway. *(Solid Waste Management Board; 329 IAC 12-2-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-2.1 "Accredited examination" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 2.1. "Accredited examination" means a written examination accredited by the commissioner for the purposes of testing individuals seeking to become certified as solid waste facility operators. *(Solid Waste Management Board; 329 IAC 12-2-2.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1479; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-2.2 "Accredited examination provider" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 2.2. "Accredited examination provider" means a person or a postsecondary learning institution that provides an accredited examination for the purpose of certifying operators in accordance with 329 IAC 12-7 and 329 IAC 12-8. *(Solid Waste Management Board; 329 IAC 12-2-2.2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1479; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-2.3 “Accredited training course” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 2.3. “Accredited training course” means a course accredited by the commissioner for the purposes of providing solid waste facility operator training for recertification. *(Solid Waste Management Board; 329 IAC 12-2-2.3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1479; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-2.4 “Accredited training course provider” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 2.4. “Accredited training course provider” means a person or a postsecondary learning institution that provides an accredited training course for the purpose of recertifying operators in accordance with 329 IAC 12-7 and 329 IAC 12-9. *(Solid Waste Management Board; 329 IAC 12-2-2.4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-3 “Altered tire” defined (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-4 “Base flood” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 4. “Base flood” means a flood that has a one percent (1%) or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in one hundred (100) years, on the average, over a significantly long period. In any given one hundred (100) year interval, such a flood may not occur or more than one (1) such flood may occur. *(Solid Waste Management Board; 329 IAC 12-2-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1953; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-5 “Board” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
 Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 5. “Board” means the solid waste management board. *(Solid Waste Management Board; 329 IAC 12-2-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1953; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-5.1 “Certificate” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 5.1. “Certificate” means a document issued by the commissioner to an individual meeting the testing requirements of 329 IAC 12-7 and 329 IAC 12-8. *(Solid Waste Management Board; 329 IAC 12-2-5.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 234)*

329 IAC 12-2-5.2 “Certified operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 5.2. “Certified operator” means an individual:
 (1) with responsibility for the daily operation of the facility; and
 (2) who holds a current certificate of training issued by the commissioner.

(Solid Waste Management Board; 329 IAC 12-2-5.2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235)

329 IAC 12-2-6 “Collection container system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 6. “Collection container system” means a group of containers for solid waste collection from noncommercial, nonindustrial, and noninstitutional sources, and made available for use by the general public such as a county wide collection box system. (*Solid Waste Management Board; 329 IAC 12-2-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1953; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-7 “Commissioner” defined (Repealed)

Sec. 7. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-8 “Contaminant” defined (Repealed)

Sec. 8. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-9 “Customer” defined (Repealed)

Sec. 9. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-10 “Department” defined (Repealed)

Sec. 10. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-11 “Disposal” defined (Repealed)

Sec. 11. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-11.1 “Facility” defined

Authority: IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 25-31; IC 36-9-30

Sec. 11.1. “Facility” may consist of one (1) or more permitted processing, storage, disposal, or operational units used for processing, storing in conjunction with processing or disposal, or disposing of solid waste. The term includes:

- (1) all contiguous land and structures related to the permit;
- (2) other appurtenances related to the permit; and
- (3) improvements on the land related to the permit.

(*Solid Waste Management Board; 329 IAC 12-2-11.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-12 “Garbage” defined (Repealed)

Sec. 12. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-13 “Generating facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 13. “Generating facility” has the meaning as set forth in 329 IAC 11-2-12. (*Solid Waste Management Board; 329 IAC 12-2-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-14 “Generator” defined (Repealed)

Sec. 14. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-15 “Grading” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 15. “Grading” means the contouring of land so that surface water flow and erosion are controlled according to a predetermined plan. (*Solid Waste Management Board; 329 IAC 12-2-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-16 “Ground water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 16. “Ground water” means water below the land surface in the zone of saturation. (*Solid Waste Management Board; 329 IAC 12-2-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-17 “Hazardous waste” defined (Repealed)

Sec. 17. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-18 “Incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 18. “Incinerator” has the meaning set forth in 329 IAC 11-2-16. (*Solid Waste Management Board; 329 IAC 12-2-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-19 “Industrial process waste” defined (Repealed)

Sec. 19. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-20 “Infectious waste” defined (Repealed)

Sec. 20. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-21 “Infectious waste incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 21. “Infectious waste incinerator” has the meaning set forth in 329 IAC 11-2-19. (*Solid Waste Management Board; 329 IAC 12-2-21; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1955; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-21.1 “Interim operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 21.1. “Interim operator” means an individual:

- (1) with responsibility for the daily operation of the facility; and
- (2) that does not yet hold a current certificate issued by the commissioner.

(*Solid Waste Management Board; 329 IAC 12-2-21.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235*)

329 IAC 12-2-22 “Legal description” defined (Repealed)

Sec. 22. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-23 “New tire” defined (Repealed)

Sec. 23. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-24 “On-site road” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 24. “On-site road” means a road for the passage of vehicles from a solid waste management activity entrance to the activity area. *(Solid Waste Management Board; 329 IAC 12-2-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1955; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 235)*

329 IAC 12-2-25 “Open burning” defined (Repealed)

Sec. 25. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-26 “Open dump” defined (Repealed)

Sec. 26. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-27 “Operating personnel” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 27. “Operating personnel” means persons necessary to properly operate a solid waste management activity. *(Solid Waste Management Board; 329 IAC 12-2-27; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1955; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-27.1 “Operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 27.1. “Operator” means the person or persons responsible for the overall operation of a facility or part of a facility. *(Solid Waste Management Board; 329 IAC 12-2-27.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-27.2 “Owner” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 27.2. “Owner” means the person who owns a facility or part of a facility. *(Solid Waste Management Board; 329 IAC 12-2-27.2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-28 “Passenger tire equivalent” or “PTE” defined (Repealed)

Sec. 28. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-29 “Person” defined (Repealed)

Sec. 29. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-30 “Pollution control waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 30. “Pollution control waste” includes liquid, solid, semisolid, or gaseous waste generated as a direct or indirect result from the removal of contaminants from air, water, or land that may include, but is not limited to, such waste as water and wastewater treatment sludges, baghouse dust, scrubber sludges, chemical spills, or remedial activity clean-up wastes. *(Solid Waste Management Board; 329 IAC 12-2-30; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-31 “Processing” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 31. “Processing” has the meaning set forth in 329 IAC 11-2-30. *(Solid Waste Management Board; 329 IAC 12-2-31; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-31.5 “Recertification” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 31.5. “Recertification” means the procedures under 329 IAC 12-7 and 329 IAC 12-9 to renew a certification for a certified operator meeting the applicable training requirements. *(Solid Waste Management Board; 329 IAC 12-2-31.5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-32 “Recovery” defined (Repealed)

Sec. 32. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-33 “Registered professional engineer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 33. “Registered professional engineer” means a professional engineer registered by the state of Indiana under IC 25-31. *(Solid Waste Management Board; 329 IAC 12-2-33; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-34 “Remanufactured tire” defined (Repealed)

Sec. 34. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-35 “Residue” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 35. “Residue” has the meaning set forth in 329 IAC 11-2-33. *(Solid Waste Management Board; 329 IAC 12-2-35; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-36 “Resource recovery” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 36. “Resource recovery” has the meaning set forth in 329 IAC 11-2-34. *(Solid Waste Management Board; 329 IAC 12-2-36; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-37 “Retailer” defined (Repealed)

Sec. 37. *(Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)*

329 IAC 12-2-38 “Salvaging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 38. “Salvaging” means the controlled and organized removal of materials from solid waste for utilization. *(Solid Waste Management Board; 329 IAC 12-2-38; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236)*

329 IAC 12-2-39 “Scavenging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 39. “Scavenging” means the uncontrolled and unauthorized removal of materials from solid waste. (*Solid Waste Management Board; 329 IAC 12-2-39; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 236*)

329 IAC 12-2-40 “Shredded waste tire” defined (Repealed)

Sec. 40. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-41 “Site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 41. “Site” means the land area on which the registered solid waste management activity is situated. (*Solid Waste Management Board; 329 IAC 12-2-41; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-42 “Sludge” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 42. “Sludge” means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant. (*Solid Waste Management Board; 329 IAC 12-2-42; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-43 “Solid waste” defined (Repealed)

Sec. 43. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-44 “Solid waste facility” or “facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 44. “Solid waste facility” or “facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for processing, storing in conjunction with processing or disposal, or disposing of solid waste and may consist of several processing, storage, or disposal operational units, for example, one (1) or more landfills, surface impoundments, or combinations thereof. (*Solid Waste Management Board; 329 IAC 12-2-44; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-45 “Solid waste land disposal facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 45. “Solid waste land disposal facility” has the meaning set forth in 329 IAC 10-2-176. (*Solid Waste Management Board; 329 IAC 12-2-45; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-46 “Solid waste management” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 46. “Solid waste management” means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste. (*Solid Waste Management Board; 329 IAC 12-2-46; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-47 “Solid waste processing facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 47. “Solid waste processing facility” has the meaning set forth in 329 IAC 11-2-43. (*Solid Waste Management Board; 329 IAC 12-2-47; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1958; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-48 “Special waste” defined (Repealed)

Sec. 48. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-49 “Surface impoundment” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 49. (a) “Surface impoundment” means a facility or part of a facility that:

(1) is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials;

(2) holds or is designed to hold an accumulation of liquid wastes or wastes containing free liquids; and

(3) is not an injection well.

(b) Examples of surface impoundments may include the following:

(1) Holding, storage, settling, and aeration pits.

(2) Holding, storage, settling, and aeration ponds.

(3) Holding, storage, settling, and aeration lagoons.

(*Solid Waste Management Board; 329 IAC 12-2-49; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1958; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-50 “Surface water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 50. “Surface water” has the meaning set forth in 329 IAC 11-2-46. (*Solid Waste Management Board; 329 IAC 12-2-50; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1958; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-51 “Tire” defined (Repealed)

Sec. 51. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-52 “Transfer station” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 52. “Transfer station” has the meaning set forth in 329 IAC 11-2-47. (*Solid Waste Management Board; 329 IAC 12-2-52; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1959; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-53 “Transformed tire” defined (Repealed)

Sec. 53. (*Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 12-2-54 “Vector” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 54. “Vector” means any animal capable of harboring and transmitting micro-organisms from one (1) animal to another or to a human. (*Solid Waste Management Board; 329 IAC 12-2-54; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1959; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 237*)

329 IAC 12-2-55 “Washout” defined (Repealed)

Sec. 55. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-56 “Waste tire” defined (Repealed)

Sec. 56. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-57 “Waste tire processing operation” defined (Repealed)

Sec. 57. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-58 “Waste tire storage site” defined (Repealed)

Sec. 58. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-59 “Waste tire transporter” defined (Repealed)

Sec. 59. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-60 “Water pollution” defined (Repealed)

Sec. 60. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-61 “Waters” defined (Repealed)

Sec. 61. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

329 IAC 12-2-62 “Wholesaler” defined (Repealed)

Sec. 62. (Repealed by Solid Waste Management Board; filed Sep 7, 2001, 1:35 p.m.: 25 IR 239)

Rule 3. Exclusions

329 IAC 12-3-1 Exclusions; general

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

- (1) Disposing of only uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.
- (2) Land application activities regulated by 327 IAC 6 and 327 IAC 7.
- (3) Confined feeding control activities regulated by IC 13-18-10.
- (4) Wastewater discharge activities regulated by 327 IAC 5.
- (5) Processing, except for incineration, in which the waste, other than tires, has been segregated from the general solid waste stream prior to arrival at the processing site.
- (6) Processing, except for incineration, of solid waste which takes place at the generating facility.
- (7) Processing and disposal of uncontaminated and untreated natural growth solid waste including tree limbs, stumps, leaves, and grass clippings.
- (8) Disposal of sawdust which is derived from processing untreated natural wood.
- (9) The disposal of coal ash, transported by water, into an ash pond which has received a water pollution control facility construction permit under 327 IAC 3.
- (10) The operation of surface impoundments, however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivisions (9) and (11).
- (11) The disposal of coal ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.
- (12) Uses and disposal of coal waste as exempted from regulation in IC 13-19-3-3.
- (13) The legitimate use of iron and steelmaking slags including the use as a base for road building, but not including use for

land reclamation except as allowed under subdivision (15).

(14) The legitimate use of foundry sand which has been demonstrated as suitable for restricted waste site Type III under the provisions of 329 IAC 10-9, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (15).

(15) Other uses of solid waste may be approved by the commissioner if the commissioner determines them to be legitimate uses that do not pose a threat to public health and the environment.

(Solid Waste Management Board; 329 IAC 12-3-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1960; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-3-2 Exclusion; hazardous waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) Hazardous wastes are regulated by and shall be treated, stored, and disposed of in accordance with 329 IAC 3.1. Hazardous waste that is regulated by 329 IAC 3.1 is not subject to the provisions of this article.

(b) No hazardous waste that is regulated by 329 IAC 3.1 shall be disposed at any solid waste facility regulated under this article.

(c) For the purposes of this article, "hazardous waste that is regulated by 329 IAC 3.1" does not include hazardous waste that is generated in quantities less than one hundred (100) kilograms per month and is therefore excluded from regulation under the hazardous waste management article, 329 IAC 3.1. Such small quantities of hazardous waste shall be disposed of in accordance with 329 IAC 10.

(d) Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility. *(Solid Waste Management Board; 329 IAC 12-3-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1960; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 4. Collection Container Systems

329 IAC 12-4-1 Collection container systems

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) Collection container systems are subject to this rule.

(b) The operator of a collection container system shall file with the commissioner a notification that includes the following information:

(1) A United States Geological Survey (USGS) topographical quadrangle map or maps, seven and one-half (7½) minute or equivalent, showing the collection container site or sites.

(2) A brief narrative description of the proposed operation, including the following:

(A) Anticipated sources and quantities of the incoming solid waste.

(B) Names and locations of all solid waste incinerators and solid waste land disposal facilities that must be the destination for waste from the collection containers.

(C) Frequency of collection container pickup for transport to the receiving facility.

(D) Procedures for controlling odors, fire, vectors, litter, and handling bulk waste at the site or sites.

(c) The operator of the collection container system shall comply with the operational requirements specified in the following:

(1) Solid waste must be confined to the designated storage, loading, and unloading areas of the site. The collection container system and adjacent areas must be maintained clean and litter free.

(2) The collection container system must be cleaned as necessary to prevent a nuisance or public health hazard.

(Solid Waste Management Board; 329 IAC 12-4-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1961; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 5. Waste Tires (Repealed)

(Repealed by Solid Waste Management Board; filed Oct 10, 2000, 3:10 p.m.: 24 IR 333)

Rule 6. Disposition of Waste Tires (Repealed)

(Repealed by Solid Waste Management Board; filed Oct 10, 2000, 3:10 p.m.: 24 IR 333)

Rule 7. Solid Waste Facility Operator Certification

329 IAC 12-7-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 1. (a) This rule shall apply to individuals responsible for operation of the following facilities in accordance with 329 IAC 10:

- (1) Permitted solid waste incinerators and waste to energy facilities.
- (2) Permitted municipal and nonmunicipal solid waste land disposal facilities.
- (3) Permitted restricted waste sites and construction/demolition sites.
- (b) The operators of the following facilities are deemed certified under this rule:
 - (1) Permitted hazardous waste treatment, storage, and disposal facilities that comply with the training requirements under 329 IAC 3.1-9.
 - (2) Incinerators described under 329 IAC 11-19-2(a).

(Solid Waste Management Board; 329 IAC 12-7-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1481; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-7-2 General provisions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 2. (a) Solid waste management facilities to which this rule applies must have at least one (1) interim or certified operator at the facility at all times when the solid waste management facility designated under section 1(a) of this rule is in operation. If the interim or certified operator is absent from the facility, the interim or certified operator shall remain available through contact by electronic communication device or telephone.

(b) Except as provided in subsection (c), (e), or (f), an individual shall not perform the duties of an operator unless that individual has a valid certificate from the commissioner.

(c) An individual who performs the duties of an operator on or before the effective date of this rule shall be considered an interim operator and may continue to perform the duties of a certified operator. However, an interim operator shall pass an accredited examination and receive a certificate under this rule and 329 IAC 12-8 no later than one (1) year after the effective date of this rule.

(d) For each interim operator, the solid waste management facilities designated in section 1(a) of this rule shall keep the following information in the operating record:

- (1) The name of the interim operator.
- (2) The date on which the interim operator was designated responsible for the operation of the facility.
- (e) A solid waste management facility may operate a facility with an interim operator if the certified operator:
 - (1) leaves the employment of the facility; or
 - (2) is unable to fulfill the responsibilities of certified operator for a period of time.

(f) An interim operator designated under subsection (e) may serve for up to one hundred twenty (120) days after the departure of the certified operator.

(g) A request for an extension of the one hundred twenty (120) day time period may be made by:

- (1) submitting a written request for extension to the commissioner; and
- (2) providing an explanation of the reason the extension is being requested.

(h) The certificate shall be posted in the office at the facility for the certified operator. Certified operators shall have available at the permitted facility a photographic identification card, such as driver's license or other picture identification card, when serving as the facility's certified operator. The certificate and photographic identification card shall both be available for inspection by the department representatives during an inspection. *(Solid Waste Management Board; 329 IAC 12-7-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1481; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 12-7-3 Operator certification: certification; classification and application

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 3. (a) A certification shall be issued by the commissioner to an individual who demonstrates the skill and knowledge necessary to operate the appropriate type of solid waste management facility through:

- (1) testing for the initial certification; or
- (2) attendance in an accredited training course for recertification.
- (b) Certificates shall be classified as follows:
 - (1) Category I certification for operators of solid waste incinerators and waste to energy facilities.

- (2) Category II certification for operators of municipal and nonmunicipal solid waste land disposal facilities.
- (3) Category III certification for operators of restricted waste sites and construction/demolition sites.
- (4) Category IV certification for a specific facility.
- (c) An individual certified to operate a Category II facility shall also be considered certified to operate a Category III facility.
- (d) An individual seeking certification or recertification must complete an application provided by the approved examination provider or the accredited training course provider that contains the following:
 - (1) The name of the individual seeking certification or recertification.
 - (2) The name, full address, and telephone number of the facility at which the individual is currently employed if applicable.
 - (3) The type of facility at which the individual is currently employed if applicable.
 - (4) The type of certification sought by the applicant.
 - (5) A statement to be signed by the individual seeking certification or recertification. The statement must read, "I certify under penalty of law that this document and all attachments are to the best of my knowledge true, accurate, and complete."
- (e) An initial certificate granted under subsection (a)(1) or section 5 of this rule shall be valid for one (1) year from the date of issuance.
- (f) Individuals certified or recertified in accordance with 40 CFR 60.56a(d) may request to receive Category IV certification or recertification by submitting the following to the commissioner:
 - (1) An application containing the information specified in subsection (d)(1) through (d)(5).
 - (2) A copy of the current certification obtained under 40 CFR 60.56a(d).
 - (3) Documentation of receipt of any annual training or update required under 40 CFR 60.56a(d). (*Solid Waste Management Board; 329 IAC 12-7-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1481; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1618; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470*)

329 IAC 12-7-4 Certification; verification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 4-21.5-3-4; IC 13-15-10; IC 36-9-30

- Sec. 4. (a) Within one (1) week after each examination, providers of an approved examination shall provide verification of testing to the commissioner by submission of the following:
- (1) The completed application for all individuals taking the approved examination.
 - (2) The examination scores for all individuals taking the approved examination.
- (b) Within one (1) week after each course, accredited training course providers shall provide verification of training to the commissioner by submission of the completed application for all individuals trained in the accredited training course.
- (c) The verification from the provider of an approved examination or the accredited training course provider shall be reviewed by the commissioner and compared to the list of people having had their certification revoked as provided for in section 7(a) of this rule.
- (d) The commissioner will deny certification to an individual that has a revoked certification for which the time period of the penalty has not lapsed.
- (e) A denied certification may be appealed under IC 4-21.5-3-4. (*Solid Waste Management Board; 329 IAC 12-7-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1482; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-7-5 Reciprocity

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

- Sec. 5. (a) Any individual seeking certification who has been certified as a solid waste facility operator by an accrediting institution in another state may be designated a certified operator for a facility that is comparable to the facility that the individual was certified to operate in another state.
- (b) A request for a certificate from the commissioner may be made by submitting the following:
- (1) An application on forms prescribed by the commissioner.
 - (2) A copy of a solid waste facility operator certification from an accrediting institution in another state.
- (c) Upon receipt of a certificate from the commissioner, the individual seeking reciprocity may begin to operate a facility comparable to the facility for which certification was received from another state. (*Solid Waste Management Board; 329 IAC 12-7-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1482; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-7-6 Operator certification: recertification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 6. (a) To renew, an operator must take an accredited training course approved by the commissioner under 329 IAC 12-9. A certified operator must complete an accredited training course prior to expiration of the operator's valid certificate.

(b) A certified operator completing one (1) or more accredited training courses in the twelve (12) months prior to the expiration of that operator's valid certificate shall be recertified. Recertification renews that operator's valid certificate for one (1) year from the expiration date of the certificate that was valid at the time of the training. (*Solid Waste Management Board; 329 IAC 12-7-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1482; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1619; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470*)

329 IAC 12-7-7 Certification revocation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 4-21.5; IC 13-15-10; IC 36-9-30

Sec. 7. (a) The commissioner may make a decision to revoke a certificate if the certified operator commits any of the following:

(1) Repeatedly violates a requirement or requirements of:

(A) 329 IAC 10 regarding operation of a solid waste facility;

(B) 329 IAC 11 regarding incinerator operation; or

(C) 329 IAC 12 regarding operator certification.

(2) Endangers human health, safety, or the environment by knowingly or intentionally violating operating procedures of a solid waste facility.

(3) Falsifies information provided to the department, a provider of an accredited examination, or accredited training course provider for certification purposes.

(4) Falsifies information on an extension request for interim status.

(b) A revoked certificate must be for a period established by the commissioner, but not less than six (6) months.

(c) The certification may be revoked following the procedures under IC 4-21.5.

(d) Unless specified otherwise by the commissioner in a revocation of certification, a certified operator having a revoked certification must pass an accredited examination after the time period designated under subsection (b) of the revocation has expired to become certified after a revocation.

(e) Permanent revocation of certification may be made by the commissioner for an operator with multiple violations or revocations. (*Solid Waste Management Board; 329 IAC 12-7-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1483; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-7-8 Duplicate certificate

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 8. In order to replace a certificate that has been lost or stolen, a certified operator must do the following:

(1) Submit a request for a duplicate certificate to the commissioner.

(2) Include a statement indicating the reason a duplicate certificate is needed.

(*Solid Waste Management Board; 329 IAC 12-7-8; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1483; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 8. Solid Waste Facility Operator Testing Requirements

329 IAC 12-8-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 1. This rule shall apply to a person or postsecondary learning institution that provides an accredited examination for the purpose of certifying individuals under 329 IAC 12-7 and this rule. (*Solid Waste Management Board; 329 IAC 12-8-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1483; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-8-2 Examination requirements

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 2. (a) Examinations shall consist of at least fifty (50) multiple choice questions. Hands-on testing may also be included as part of the examination to demonstrate knowledge and skill of the subject matter.

(b) An individual taking the accredited examination must receive a score of at least seventy percent (70%) correct responses to receive certification.

(c) Except as indicated in subsection (d), the examination shall include a question or questions that address each of the topics outlined in section 2, 3, or 4 of this rule.

(d) The examination for a Category IV site shall include a question or questions that address each of the topics applicable to the type of site for which the examination was developed.

(e) Books, notes, charts, or other informational sources must not be used by the applicant during the examination.

(f) Accredited providers of an accredited examination shall develop a new examination for purposes of this rule and 329 IAC 12-7 at least once every three (3) years.

(g) All examinations developed by the provider of an accredited examination for the purpose of testing solid waste facility operators must not be shown or given to any person except for the following:

(1) The commissioner for approval under section 7 of this rule.

(2) The individual taking the examination during the time that the examination is administered.

(Solid Waste Management Board; 329 IAC 12-8-2; filed Feb 3, 1997, 9:15 a.m.; 20 IR 1483; readopted filed Jan 10, 2001, 3:25 p.m.; 24 IR 1535)

329 IAC 12-8-3 Examination requirements for Category I certification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 3. (a) In order to qualify for accreditation as an accredited examination provider for Category I certification for operators of solid waste incinerators and waste to energy facilities, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination under the Category IV certification for a specific type of site. Except for operators certified or recertified in accordance with 329 IAC 12-7-3(f), site-specific examinations under Category IV for operators of solid waste incinerators and waste to energy facilities must address any Category I topics in subsection (c) that are applicable to the type of site for which the examination has been developed.

(c) A Category I certification examination shall adequately address the following topics:

(1) Purpose of training course.

(2) Terms and formulas to include the following:

(A) Engineering units.

(B) Heating value.

(C) Emissions measurements.

(D) Standard conditions.

(3) Incineration fundamentals to include the following:

(A) Burning in air.

(B) Compound weights.

(C) Heat content of waste.

(D) Incinerator calculations.

(E) Alkali requirements.

(F) Exhaust oxygen.

(G) 3-Ts of combustion and combustion processes.

(H) Complete combustion.

(I) Combustion air.

(J) Incinerator operating modes.

(K) Incinerator capacity.

(L) Fundamental incinerator design principles.

(4) Incinerators to include the following:

(A) The incinerator system.

(B) Types of incinerators.

(C) Multiple chamber incinerators.

(D) Controlled air incinerators.

(E) Rotary kiln incinerators.

(F) Other systems.

(5) Incinerator system components and accessories to include the following:

(A) Incinerator combustion chambers.

(B) Auxiliary fuel systems.

(C) System air supply.

- (D) Waste handling.
 - (E) Charging systems.
 - (F) Stoking and agitating systems.
 - (G) Ash or residue removal and handling systems.
 - (H) Waste heat recovery system.
 - (I) Exhaust or flue-gas handling systems.
- (6) Incinerator emissions and air pollution control requirements to include the following:
- (A) Incinerator emissions.
 - (B) Regulatory emission requirements and measurements.
 - (C) Air pollution control (APC).
 - (D) Ash and liquid discharge disposal.
- (7) Controls, instrumentation, and monitoring to include the following:
- (A) Incinerator control systems.
 - (B) Control features.
 - (C) Sensors, set points, and controls.
 - (D) Sensing elements.
 - (E) Signal transmission.
 - (F) Indication.
 - (G) Control panels.
 - (H) Logging operating data.
 - (I) Regulatory monitoring requirements.
- (8) Operation and performance to include the following:
- (A) Incinerator operator parameters.
 - (B) Incinerator operations.
 - (C) Combustion chamber temperature controls.
 - (D) Waste heat boiler.
 - (E) Air pollution control system operation.
 - (F) Shutdown procedures.
 - (G) Incinerator system performance.
 - (H) Basic reasons for poor performance.
 - (I) Incinerator operators.
 - (J) Maintenance and repair.
 - (K) Finding and correcting problems.
 - (L) Regulatory requirements.
- (9) Environmental safety and risks to include the following:
- (A) Public perceptions.
 - (B) Stack emissions.
 - (C) Types of risk.
 - (D) Relationships and comparisons with other everyday risks.
 - (E) Other environmental issues and potential risks.
- (10) Medical waste to include the following:
- (A) Waste definitions.
 - (B) Waste quantities.
 - (C) Waste composition and characteristics.
 - (D) Waste treatment and disposal alternatives.
- (11) Disease transmission to include the following:
- (A) Occupational and environmental.
 - (B) Factors for disease transmission.
 - (C) Risk factors.
 - (D) Protecting against disease transmission.
 - (E) Labeling and packaging of biomedical waste.
 - (F) Internal infectious waste policies and procedures.
- (12) Occupational and environmental safety to include the following:
- (A) Occupational safety and health administration (OSHA).
 - (B) Incinerator workplace.
 - (C) Waste handling and exposure.
- (13) Specific state requirements to include the following:

- (A) Regulations and requirements.
- (B) Interpretation of requirements.
- (C) What must be done to comply with regulations.
- (D) Local reference list of agencies to call and contact.
- (E) Ash handling and disposal.

(Solid Waste Management Board; 329 IAC 12-8-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1484; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-8-4 Examination requirements for Category II certification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 4. (a) In order to qualify for accreditation as an accredited examination provider for Category II certification for operators of municipal and nonmunicipal solid waste disposal facilities, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination under the Category IV certification for a specific type of site. For operators of municipal and nonmunicipal solid waste disposal facilities, the examination for operator certification under Category IV must address any Category II topics in subsection (c) that are applicable to the type of site for which the examination has been developed.

(c) A Category II certification shall adequately address the following topics:

- (1) Purpose of training course.
- (2) An overview of municipal and nonmunicipal solid waste disposal facilities in integrated municipal solid waste management to address the following:
 - (A) Generation of municipal solid wastes.
 - (B) Physical and chemical composition of solid wastes.
 - (C) Municipal solid waste management.
- (3) Basics of site selection.
- (4) Complying with design requirements to the following:
 - (A) Specifications.
 - (B) Types of plans.
 - (C) Plan reading.
 - (D) Municipal and nonmunicipal solid waste facility landfill methods.
- (5) Waste acceptance and screening to include the following:
 - (A) Wastes prohibited by state and federal law and regulations.
 - (B) Commonly prohibited wastes.
 - (C) Wastes requiring special handling.
 - (D) Special wastes.
 - (E) Screening methods for prohibited wastes.
 - (F) Record keeping and notification requirements.
 - (G) Public information and education.
- (6) Waste decomposition to include the following:
 - (A) Fate of wastes.
 - (B) Effects of decomposition.
 - (C) Subsidence and differential settlement.
 - (D) Landfill gas generation and migration.
 - (E) Leachate generation, migration, and control.
- (7) Control processes for landfill gas and leachate to include the following:
 - (A) Landfill gas and leachate characteristics.
 - (B) Managing landfill gas.
 - (C) Protection of facilities built on landfills.
 - (D) Landfill gas recovery and use.
 - (E) Managing leachate.
- (8) Operational techniques shall adequately address the following:
 - (A) Design and operational plans.
 - (B) Operational practices.
 - (C) Cover systems.
 - (D) Operation of a lined facility.
 - (E) Operational problems.
 - (F) Site operation to minimize environmental and health problems.

- (9) Closure and long term care shall adequately address the following:
 - (A) Site closure.
 - (B) Closure considerations.
 - (C) Closure plan.
 - (D) Long term care and environmental monitoring.
 - (E) Landfill site end uses.
 - (F) Final cover design.
 - (G) Vegetation.
 - (H) Financing closure and postclosure care.

(Solid Waste Management Board; 329 IAC 12-8-4; filed Feb 3, 1997, 9:15 a.m.; 20 IR 1485; readopted filed Jan 10, 2001, 3:25 p.m.; 24 IR 1535)

329 IAC 12-8-5 Examination requirements for Category III certification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
 Affected: IC 13-15-10; IC 36-9-30

Sec. 5. (a) In order to qualify for accreditation as an accredited examination provider for Category III certification for operators of restricted waste sites and construction/demolition sites, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination under the Category IV certification for a specific type of site. For operators of restricted waste sites and construction/demolition sites, the examination for operator certification under Category IV must address any Category III topics in subsection (c) that are applicable to the type of site for which the examination has been developed.

(c) A Category III certification shall adequately address the following topics:

- (1) Purpose of training course.
- (2) The role of restricted waste and construction/demolition sites in waste management to address the following:
 - (A) Types of restricted wastes.
 - (B) Generation of restricted wastes.
 - (C) Physical and chemical composition of restricted wastes.
 - (D) Overview of restricted waste management.
- (3) Basics of site selection.
- (4) Complying with design requirements to the following:
 - (A) Specifications.
 - (B) Types of plans.
 - (C) Plan reading.
 - (D) Landfill methods.
- (5) Waste acceptance and screening to include the following:
 - (A) Wastes prohibited by state and federal law and regulations.
 - (B) Commonly prohibited wastes.
 - (C) Wastes requiring special handling.
 - (D) Screening methods for prohibited wastes.
 - (E) Record keeping and notification requirements.
 - (F) Public information and education.
- (6) Waste decomposition to include the following:
 - (A) Subsidence and differential settlement.
 - (B) Leachate generation, migration, and control.
- (7) Operational techniques shall adequately address the following:
 - (A) Design and operational plans.
 - (B) Operational practices.
 - (C) Cover systems.
 - (D) Operation of a lined facility.
 - (E) Operational problems.
 - (F) Site operation to minimize environmental and health problems.
- (8) Closure and long term care shall adequately address the following:
 - (A) Site closure.
 - (B) Closure considerations.
 - (C) Closure plan.
 - (D) Long term care and environmental monitoring.
 - (E) Landfill site end uses.

- (F) Final cover design.
- (G) Vegetation.
- (H) Financing closure and post-closure care.

(Solid Waste Management Board; 329 IAC 12-8-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1485; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-8-6 Accredited examination providers; qualifications for accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 6. A person or postsecondary learning institution wishing to be approved as a provider of an examination for solid waste facility operator certification shall provide the following:

- (1) Documentation that the examination meets or exceeds the applicable requirements of section 3, 4, or 5 of this rule.
- (2) Verification of testing to the commissioner in accordance with 329 IAC 12-7-4.
- (3) At least two (2) weeks in advance of the examination, notice to the commissioner of the location and time accredited examinations are to be conducted.
- (4) Allow department representatives to attend and take the examination, for the purposes of auditing, evaluating, and monitoring, any examination without charge to the department. The department is not required to give advanced notice of such an audit.

(Solid Waste Management Board; 329 IAC 12-8-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1486; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-8-7 Accredited examination providers; application for accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 7. (a) A provider of an examination seeking accreditation of an examination by the commissioner shall complete the following:

- (1) Submit a completed application on forms prescribed by the commissioner.
- (2) Provide the following information:
 - (A) The provider's name, full address, telephone number, and primary contact person.
 - (B) The type of examination.
 - (C) A copy of the examination and information on scoring.
 - (D) Detailed statement about the development of the examination.
 - (E) Schedule and plans for revisions of the examination.
- (b) A letter of accreditation from the commissioner shall be issued to a provider that receives approval of an examination.
- (c) A letter of accreditation from the commissioner shall be valid for three (3) years from the date it is issued.
- (d) Examination providers shall not be approved to provide examinations unless they have a valid letter of accreditation from the commissioner.

(e) Within thirty (30) days of any change to an examination, a provider of an accredited examination shall submit a copy of the changed examination to the commissioner. *(Solid Waste Management Board; 329 IAC 12-8-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1486; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 12-8-8 Reaccreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 8. (a) An accredited examination provider seeking reaccreditation by the commissioner shall:

- (1) have possessed a valid letter of accreditation from the commissioner within the previous six (6) months for providing accredited examinations for operators; and
- (2) submit a completed application on forms prescribed by the commissioner and include updated information as required in section 7(a)(2) of this rule.
- (b) Upon review, the commissioner shall make an initial determination as to the eligibility of the examination for reaccreditation. The commissioner shall issue a letter of reaccreditation to an accredited examination provider that fulfills the requirements of this rule.
 - (c) A letter of reaccreditation shall be valid for three (3) years from the date of issuance.
 - (d) Within thirty (30) days of a change, an accredited examination provider shall notify the commissioner in writing of a change

in the examination or primary contact person. (*Solid Waste Management Board; 329 IAC 12-8-8; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1487; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-8-9 Representation of examination accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 9. No person shall make a representation as providing an accredited examination for the purpose of accrediting an individual under 329 IAC 12-7 and this rule without being currently accredited by the commissioner under this rule. (*Solid Waste Management Board; 329 IAC 12-8-9; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1487; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-8-10 Accreditation revocation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 4-21.5; IC 13-15-10; IC 36-9-30

Sec. 10. (a) The commissioner may revoke the accreditation of an examination if the examination provider commits any of the following:

- (1) Violates a requirement of this rule.
- (2) Falsifies information on an application to provide accredited examinations for individuals taking the examination.
- (3) Falsifies information on individuals taking the examination.
- (4) Fails to meet a qualification specified in sections 2 through 5 of this rule.
- (5) Fails to provide a quality examination based on documented complaints registered with the commissioner about an examination.
- (6) Has a continual failure rate of more than twenty percent (20%) of the individuals taking the examination.

(b) The accreditation may be revoked following procedures under IC 4-21.5. (*Solid Waste Management Board; 329 IAC 12-8-10; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1487; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 9. Solid Waste Facility Operator Training Requirements

329 IAC 12-9-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 1. This rule shall apply to a person or postsecondary learning institution that provides an accredited training course for the purpose of recertifying individuals under 329 IAC 12-7, 329 IAC 12-8, and this rule. (*Solid Waste Management Board; 329 IAC 12-9-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1487; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-9-2 Accredited training course requirements for recertification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 2. (a) Training courses shall be classified as follows:

- (1) Category I recertification training course for operators of solid waste incinerators and waste to energy facilities.
- (2) Category II recertification training course for operators of municipal and nonmunicipal solid waste land disposal facilities.
- (3) Category III recertification training course for operators of restricted waste sites and construction/demolition sites.
- (4) Category IV recertification training course for a specific facility.

(b) The accredited training course must include, at a minimum, applicable topics relating to the appropriate category of solid waste facility operation as follows:

- (1) An update on applicable Indiana legislation and regulations.
- (2) Discussion of applicable department policy.
- (3) Information on new or improved technologies.
- (4) Information on changes to processes.
- (5) Information on changes in management practices.

(c) The accredited training course must be at least four (4) hours in length. (*Solid Waste Management Board; 329 IAC 12-9-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1487; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-9-3 Accredited training course providers; qualifications for accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 3. A person or postsecondary learning institution wishing to be approved as a provider of an accredited training course shall do the following:

- (1) Provide documentation that the training course or courses meet or exceed the applicable requirements of section 2 of this rule.
- (2) Provide verification of training to the commissioner in accordance with 329 IAC 12-7-4.
- (3) Allow department representatives to attend, for purposes of auditing, evaluating, and monitoring, any training course without charge to the department. The department is not required to give advanced notice of such an audit.
- (4) At least two (2) weeks in advance of the first day of the course, provide notice to the commissioner of location and time of accredited training courses.

(Solid Waste Management Board; 329 IAC 12-9-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1488; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 12-9-4 Accredited training course providers; application for accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 4. (a) A training course provider seeking accreditation of a training course by the commissioner shall complete the following:

- (1) Submit a completed application on forms prescribed by the commissioner, including the following:
 - (A) The training course provider's name, full address, telephone number, and primary contact person.
 - (B) The name and category of the training course.
- (2) Provide the following additional information:
 - (A) The course curriculum and course objectives.
 - (B) A letter from the training course provider that clearly indicates how the course meets the applicable requirements of section 2 of this rule, including the following information:
 - (i) Length of training in hours.
 - (ii) Amount and type of practical exercises.
 - (iii) Topics and objectives for the course.
 - (C) Provide a copy of all course materials, such as the following:
 - (i) Student manuals.
 - (ii) Instructor notebooks.
 - (iii) Handouts.
 - (D) Provide the names and qualifications of all potential course instructors, including academic credentials and field experience in solid waste management.

(b) A letter of accreditation shall be issued to a training course provider that receives accreditation from the commissioner.

(c) A letter of accreditation from the commissioner shall be valid for three (3) years from the date it is issued.

(d) Training course providers shall not be approved to provide accredited training courses for recertification unless they have a valid letter of accreditation from the commissioner.

(e) The use of subcontractors to conduct accredited training courses must be approved by the commissioner before such courses are provided.

(f) No later than thirty (30) days after a change, an accredited training course provider shall notify the commissioner in writing of a change in the course curriculum, instructional staff, or primary contact person. *(Solid Waste Management Board; 329 IAC 12-9-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1488; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 12-9-5 Reaccreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 5. (a) A training course provider seeking reaccreditation of an accredited training course by the commissioner shall:

- (1) have possessed a valid letter of accreditation from the commissioner within the previous six (6) months for providing accredited training courses for operators; and
- (2) submit a completed application on forms prescribed by the commissioner and include updated information as required in section 4(a)(2) of this rule.

(b) Upon review, the commissioner shall make a determination as to the eligibility of the training course for reaccreditation. The commissioner shall issue a letter of reaccreditation to a training course provider that fulfills the requirements of this rule.

(c) A letter of reaccreditation shall be valid for three (3) years from the date of issuance.

(d) No later than thirty (30) days after a change, an accredited training course provider reaccredited under this section shall notify the commissioner in writing of a change in the course curriculum, instructional staff, or primary contact person. (*Solid Waste Management Board; 329 IAC 12-9-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1488; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-9-6 Representation of training course accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 6. No person shall make a representation as conducting an accredited training course for the purpose of accrediting an individual under 329 IAC 12-7 and this rule without being currently accredited by the commissioner under this rule. (*Solid Waste Management Board; 329 IAC 12-9-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1489; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 12-9-7 Accreditation revocation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 4-21.5; IC 13-15-10; IC 36-9-30

Sec. 7. (a) The commissioner may revoke the accreditation of a training course if the training course provider commits any of the following:

- (1) Violates a requirement of this rule.
- (2) Falsifies information on an application under section 4 of this rule to provide accredited training courses for operators.
- (3) Falsifies certified operator information.
- (4) Fails to meet a qualification specified in sections 2 through 5 of this rule.
- (5) Fails to provide a quality course based on an audit by department personnel.

(b) The accreditation may be revoked following procedures under IC 4-21.5. (*Solid Waste Management Board; 329 IAC 12-9-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1489; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

ARTICLE 13. USED OIL MANAGEMENT

Rule 1. General Provisions

329 IAC 13-1-1 Purpose and scope

Authority: IC 13-14-8-1; IC 13-14-8-2

Affected: IC 13-11-2; IC 13-14; IC 13-19-1; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 279

Sec. 1. The purpose of this article is to establish policies, procedures, requirements, and standards to implement IC 13-19-1. This article is being promulgated for the purpose of protecting and enhancing the quality of Indiana's environment and protecting the public health, safety, and well-being of its citizens. This article establishes a used oil management program that is consistent with federal requirements in 40 CFR 279. (*Solid Waste Management Board; 329 IAC 13-1-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1489; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-1-2 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. (a) This article establishes standards for used oil management practices for the following:

- (1) Generators.
- (2) Collection centers.
- (3) Aggregation points.
- (4) Transporters.
- (5) Transfer facilities.
- (6) Processors.
- (7) Re-refiners.
- (8) Burners.
- (9) Marketers.

(b) References in this article to 40 CFR 260 through 40 CFR 270 shall mean the version adopted by reference at 329 IAC 3.1. (*Solid Waste Management Board; 329 IAC 13-1-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1489; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-1-3 Right of entry

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 3. The department, or its authorized representative, upon presentation of proper credentials, or by directive of the board, shall have a right to enter upon, to, or through public or private premises, subject to this article, to investigate, take samples, copy all records related to the management of used oil, and inspect for compliance with the requirements imposed under IC 13-15, IC 13-19, IC 13-20, IC 13-22, IC 13-23, or this article, or to determine whether a violation or threatened violation exists, in accordance with any or all of the following purposes:

(1) To determine:

(A) whether any person is subject to the requirements of IC 13-15, IC 13-19, IC 13-20, IC 13-22, IC 13-23; or

(B) whether any person subject to the requirements of IC 13-15, IC 13-19, IC 13-20, IC 13-22, or IC 13-23 is in compliance with this article.

(2) To investigate conditions relating to used oil management or used oil management practices where the commissioner has a reasonable belief that a violation of IC 13-15, IC 13-19, IC 13-20, IC 13-22, IC 13-23, or this article is occurring or is about to occur.

(3) To determine whether there has been a violation of any of the provisions of IC 13-15, IC 13-19, IC 13-20, IC 13-22, IC 13-23, this article, or any permit or order issued under IC 13-14, IC 13-15, or this article.

(*Solid Waste Management Board; 329 IAC 13-1-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-1-4 Conduct of inspection and sampling

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 4. Each investigation or inspection shall be completed with reasonable promptness. If the commissioner's authorized representative obtains any sample prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge a receipt identifying the sample obtained and, if requested, a portion of the sample in equal volume or weight to the portion retained. If any analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge. (*Solid Waste Management Board; 329 IAC 13-1-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-1-5 Enforcement

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 4-21.5; IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. The administration and enforcement of this article shall be in accordance with IC 13-14, IC 13-30, and IC 4-21.5. (*Solid Waste Management Board; 329 IAC 13-1-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-1-6 Penalties

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 6. Penalties for violations of this article are as outlined in IC 13-14 and IC 13-30. (*Solid Waste Management Board; 329 IAC 13-1-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 2. Definitions

329 IAC 13-2-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 260.10; 40 CFR 261.1; 40 CFR 280.12

Sec. 1. In addition to the definitions contained in IC 13-11-2 and in this rule, the terms defined in 40 CFR 260.10, 40 CFR 261.1, and 40 CFR 280.12 have the same meanings when used in this article. *(Solid Waste Management Board; 329 IAC 13-2-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-2 “Aboveground tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. “Aboveground tank” means a tank used to store or process used oil that is not an underground storage tank as defined in section 18 of this rule. *(Solid Waste Management Board; 329 IAC 13-2-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-3 “Commissioner” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 3. “Commissioner” means the commissioner of the department. *(Solid Waste Management Board; 329 IAC 13-2-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1490; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-4 “Container” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 4. “Container” means any portable device in which a material is:

- (1) stored;
- (2) transported;
- (3) treated;
- (4) disposed of; or
- (5) otherwise handled.

(Solid Waste Management Board; 329 IAC 13-2-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-5 “Department” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-13-1; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. “Department” means the Indiana department of environmental management created under IC 13-13-1. *(Solid Waste Management Board; 329 IAC 13-2-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-6 “Do-it-yourselfer used oil collection center” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 6. “Do-it-yourselfer used oil collection center” means any site or facility that accepts, aggregates, or stores used oil collected only from household do-it-yourselfers. *(Solid Waste Management Board; 329 IAC 13-2-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-7 “EPA” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 7. “EPA” means the U.S. Environmental Protection Agency. *(Solid Waste Management Board; 329 IAC 13-2-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-8 “Existing tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 8. “Existing tank” means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of this article. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either:

(1) a continuous on-site installation program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for installation of the tank to be completed within a reasonable time.

(Solid Waste Management Board; 329 IAC 13-2-8; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-9 “Generator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 9. “Generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. *(Solid Waste Management Board; 329 IAC 13-2-9; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-10 “Household do-it-yourselfer used oil” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 10. “Household do-it-yourselfer used oil” means oil that is derived from households, such as used oil generated by individuals through the maintenance of their personal vehicles. *(Solid Waste Management Board; 329 IAC 13-2-10; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-11 “Household do-it-yourselfer used oil generator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 11. “Household do-it-yourselfer used oil generator” means an individual who generates household do-it-yourselfer used oil. *(Solid Waste Management Board; 329 IAC 13-2-11; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-12 “New tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 12. “New tank” means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of this article. *(Solid Waste Management Board; 329 IAC 13-2-12; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-13 “Petroleum refining facility” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 13. “Petroleum refining facility” means an establishment, such as facilities classified as Standard Industrial Classification 2911 that are primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through:

(1) fractionation;

(2) straight distillation of crude oil;

(3) redistillation of unfinished petroleum derivatives;

(4) cracking; or

(5) other processes.

(Solid Waste Management Board; 329 IAC 13-2-13; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1491; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-14 “Processing” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 14. “Processing” means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to:

- (1) blending used oil with virgin petroleum products;
- (2) blending used oils to meet the fuel specification;
- (3) filtration;
- (4) simple distillation;
- (5) chemical or physical separation; and
- (6) re-refining.

(Solid Waste Management Board; 329 IAC 13-2-14; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1492; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-15 “RCRA” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 15. “RCRA” means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. *(Solid Waste Management Board; 329 IAC 13-2-15; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1492; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-16 “Re-refining distillation bottoms” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 16. “Re-refining distillation bottoms” means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock. *(Solid Waste Management Board; 329 IAC 13-2-16; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1492; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-17 “Tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 17. “Tank” means any stationary device, designed to contain an accumulation of used oil constructed primarily of nonearthen materials, such as wood, concrete, steel, or plastic, that provides structural support. *(Solid Waste Management Board; 329 IAC 13-2-17; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1492; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-2-18 “Underground storage tank” or “UST” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 18. “Underground storage tank” or “UST” means any one (1) or combination of tanks, including underground pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. The term does not include any of the following:

- (1) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes.
- (2) Tank used for storing heating oil for consumptive use on the premises where stored.
- (3) Septic tank.
- (4) Pipeline facility, including gathering lines, regulated under any of the following:
 - (A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.).
 - (B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.).

(C) An intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in clause (A) or (B).

- (5) Surface impoundment, pit, pond, or lagoon.
- (6) Storm water or wastewater collection system.
- (7) Flow-through process tank.
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
- (9) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term does not include any pipes connected to any tank described in subdivisions (1) through (9). (*Solid Waste Management Board; 329 IAC 13-2-18; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1492; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-2-19 “Used oil” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 19. “Used oil” means:

- (1) any oil that has been refined from crude oil; or
- (2) any synthetic oil;

that has been used and as a result of such use is contaminated by physical or chemical impurities. (*Solid Waste Management Board; 329 IAC 13-2-19; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1492; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-2-20 “Used oil aggregation point” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 20. “Used oil aggregation point” means any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than fifty-five (55) gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers. (*Solid Waste Management Board; 329 IAC 13-2-20; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-2-21 “Used oil burner” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 21. “Used oil burner” means a facility where used oil not meeting the specification requirements in 329 IAC 13-3-2 is burned for energy recovery in devices identified in 329 IAC 13-8-2(a). (*Solid Waste Management Board; 329 IAC 13-2-21; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-2-22 “Used oil collection center” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 22. (a) “Used oil collection center” means any site or facility that:

- (1) is registered, licensed, permitted, or recognized by a state, county, or municipal government to manage used oil; and
- (2) accepts, aggregates, or stores used oil collected from used oil generators regulated under 329 IAC 13-4 who bring used oil to the collection center in shipments of no more than fifty-five (55) gallons under 329 IAC 13-4-5.

(b) Used oil collection centers may also accept used oil from household do-it-yourselfers. (*Solid Waste Management Board; 329 IAC 13-2-22; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-2-23 “Used oil fuel marketer” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 23. “Used oil fuel marketer” means any person who conducts either of the following activities:

- (1) Directs a shipment of off-specification used oil from their facility to a used oil burner.
- (2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 329 IAC

13-3-2.

(Solid Waste Management Board; 329 IAC 13-2-23; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-24 “Used oil generator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 24. “Used oil generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. (Solid Waste Management Board; 329 IAC 13-2-24; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-25 “Used oil processor or re-refiner” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 25. “Used oil processor or re-refiner” means a facility that processes used oil. (Solid Waste Management Board; 329 IAC 13-2-25; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-26 “Used oil transfer facility” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 26. “Used oil transfer facility” means any transportation related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four (24) hours and not longer than thirty-five (35) days during the normal course of transportation or prior to an activity performed under 329 IAC 13-4-1(b)(2). Transfer facilities that store used oil for more than thirty-five (35) days are subject to regulation under 329 IAC 13-7. (Solid Waste Management Board; 329 IAC 13-2-26; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-2-27 “Used oil transporter” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 27. (a) “Used oil transporter” means:

(1) any person who:

(A) transports used oil; or

(B) collects used oil from more than one (1) generator and transports the collected oil; or

(2) owners and operators of used oil transfer facilities.

(b) Except as provided in subsection (c), used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but may not process used oil.

(c) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, such as settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products or used oil fuel. (Solid Waste Management Board; 329 IAC 13-2-27; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1493; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 3. Applicability

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 CFR 261 Subpart C.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261 Subpart D are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5 are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article;

(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1; and

(C) if applicable, are subject to the solid waste regulations under 329 IAC 10 and 329 IAC 11.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A).

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to:

(i) if applicable, the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste; and

(ii) if applicable, the solid waste regulations under 329 IAC 10 and 329 IAC 11.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts

of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

(i) In addition to the requirements of this article, marketers and burners of used oil who market used oil containing any quantifiable level of polychlorinated biphenyls (PCBs) are subject to the requirements found at 40 CFR 761.20(e). (*Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238*)

329 IAC 13-3-2 Used oil specifications

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this article unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with 329 IAC 13-9-3, 329 IAC 13-9-4, and 329 IAC 13-9-5(b), the used oil is no longer subject to this article.

Table 1-Used Oil not Exceeding any Specification Level is not Subject to this Article when Burned for Energy Recovery¹

Constituent or Property	Allowable Level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100° F minimum
Total halogens	4,000 ppm maximum ²

¹The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (See section 1(b) of this rule.).

²Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under section 1(b) of this rule. Such used oil is subject to 40 CFR 266 Subpart H rather than this article when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e). (*Solid Waste Management Board; 329 IAC 13-3-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1495; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 239*)

329 IAC 13-3-3 Prohibitions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 260.10; 40 CFR 264; 40 CFR 265

Sec. 3. (a) Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under 40 CFR 264 or 40 CFR 265.

(b) The use of used oil as a dust suppressant is prohibited.

(c) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in 40 CFR 260.10.

(2) Boilers, as defined in 40 CFR 260.10, that are identified as any of the following:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(C) Used oil-fired space heaters provided that the burner meets the provisions of 329 IAC 13-4-4.

(3) Hazardous waste incinerators subject to regulation under 40 CFR 264 Subpart O or 40 CFR 265.

(Solid Waste Management Board; 329 IAC 13-3-3; filed Feb 3, 1997, 9:15 a.m.; 20 IR 1496; readopted filed Sep 7, 2001, 1:35 p.m.; 25 IR 239)

Rule 4. Used Oil Generators

329 IAC 13-4-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 1. (a) Except as provided in this section, this rule applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation. This rule does not apply to the following:

(1) Household do-it-yourselfer used oil generators are not subject to regulation under this article.

(2) Vessels at sea or at port are not subject to this rule. For purposes of this rule, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person or persons removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this rule once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of this rule.

(3) Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this rule.

(4) Farmers who generate an average of twenty-five (25) gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this article.

(b) Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this article:

(1) Generators who transport used oil, except under the self-transport provisions of section 5(1) and 5(2) of this rule, must also comply with 329 IAC 13-6.

(2) Except as provided in subdivision (3), generators who process or re-refine used oil must also comply with 329 IAC 13-7.

(3) Generators who perform any of the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on-specification or off-specification used oil fuel:

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator.

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse under Section 402 or 307(b) of the Clean Water Act or other applicable federal or state regulations governing the management or discharge of wastewaters.

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation.

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible under 329 IAC 13-3-1(c).

(E) Filtering, separating, or otherwise reconditioning used oil before burning it in a space heater under section 4 of this rule.

(4) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of

section 4 of this rule, must also comply with 329 IAC 13-8.

(5) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 329 IAC 13-3-2 must also comply with 329 IAC 13-9.

(6) Generators who dispose of used oil must also comply with 329 IAC 13-10.

(Solid Waste Management Board; 329 IAC 13-4-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1496; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-4-2 Hazardous waste mixing

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. (a) Mixtures of used oil and hazardous waste must be managed in accordance with 329 IAC 13-3-1(b).

(b) The rebuttable presumption for used oil of 329 IAC 13-3-1(b)(1)(B) applies to used oil managed by generators. Under the rebuttable presumption for used oil of 329 IAC 13-3-1(b)(1)(B), used oil containing greater than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste and thus must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils or fluids and certain used oils removed from refrigeration units. *(Solid Waste Management Board; 329 IAC 13-4-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1497; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-4-3 Used oil storage

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 112; 40 CFR 264; 40 CFR 265; 40 CFR 280

Sec. 3. (a) In addition to the requirements of this rule, used oil generators are also subject to the following:

(1) All applicable spill prevention, control, and countermeasures found at 40 CFR 112.

(2) The underground storage tank standards found at 40 CFR 280 for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste.

(3) All applicable regulations of the Indiana fire prevention and building safety commission.

(b) Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under 40 CFR 264 or 40 CFR 265.

(c) Containers and aboveground tanks used to store used oil at generator facilities must:

(1) be in good condition with no severe rusting, apparent structural defects, or deterioration; and

(2) not be leaking (no visible leaks).

(d) Requirements for labels shall be as follows:

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".

(e) Upon detection of a release of used oil to the environment not subject to the requirements of 40 CFR 280 Subpart F, which has occurred after the effective date of this rule, a generator must perform the following clean-up steps:

(1) Stop the release.

(2) Contain the released used oil.

(3) Clean up and manage properly the released used oil and other materials.

(4) Communicate a spill report in accordance with 327 IAC 2-6.1.

(5) If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(Solid Waste Management Board; 329 IAC 13-4-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1497; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-4-4 On-site burning in space heaters

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 4. Generators may burn used oil in used oil-fired space heaters provided that:

(1) the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used

oil generators;

(2) the heater is designed to have a maximum capacity of not more than five-tenths (0.5) million British thermal units per hour; and

(3) the combustion gases from the heater are vented to the ambient air.

(Solid Waste Management Board; 329 IAC 13-4-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1497; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-4-5 Off-site shipments

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. Except as provided as follows, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers:

(1) Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(A) the generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(B) the generator transports no more than fifty-five (55) gallons of used oil at any time; and

(C) the generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state, county, or municipal government to manage used oil.

(2) Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(A) the generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(B) the generator transports no more than fifty-five (55) gallons of used oil at any time; and

(C) the generator transports the used oil to an aggregation point that is owned or operated by the same generator.

(3) Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor or re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a tolling arrangement, must indicate:

(A) The type of used oil and the frequency of shipments.

(B) That the vehicle used to transport the used oil to the processing or re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor or re-refiner.

(C) That reclaimed oil will be returned to the generator.

(Solid Waste Management Board; 329 IAC 13-4-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1498; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Rule 5. Used Oil Collection Centers and Aggregation Points

329 IAC 13-5-1 Do-it-yourselfer used oil collection centers

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 1. (a) This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts, aggregates, or stores used oil collected only from household do-it-yourselfers.

(b) Owners or operators of all DIY used oil collection centers must comply with the generator standards in 329 IAC 13-4.

(Solid Waste Management Board; 329 IAC 13-5-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1498; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-5-2 Used oil collection centers

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. (a) This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts, aggregates, or stores used oil collected from used oil generators regulated under 329 IAC 13-4 who bring used oil to the collection center in shipments of no more than fifty-five (55) gallons under the provisions of 329 IAC 13-4-5(a). Used oil collection centers may also accept used oil from household do-it-yourselfers.

(b) Owners or operators of all used oil collection centers must:

(1) comply with the generator standards in 329 IAC 13-4; and

(2) be registered, licensed, permitted, or recognized by a state, county, or municipal government to manage used oil. (*Solid Waste Management Board; 329 IAC 13-5-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1498; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-5-3 Used oil aggregation points owned by the generator

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 3. (a) This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than fifty-five (55) gallons under the provisions of 329 IAC 13-4-5(2). Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(b) Owners or operators of all used oil aggregation points must comply with the generator standards in 329 IAC 13-4. (*Solid Waste Management Board; 329 IAC 13-5-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1498; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 6. Used Oil Transporter and Transfer Facilities

329 IAC 13-6-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261.7

Sec. 1. (a) Except as provided in this section, this rule applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one (1) generator and transport the collected oil, and owners and operators of used oil transfer facilities. This rule does not apply to the following:

(1) On-site transportation.

(2) Generators who transport shipments of used oil totaling fifty-five (55) gallons or less from the generator to a used oil collection center as specified in 329 IAC 13-4-5(1).

(3) Generators who transport shipments of used oil totaling fifty-five (55) gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in 329 IAC 13-4-5(2).

(4) Transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor or re-refiner, or burner subject to the requirements of this article.

Except as provided in this subsection, this rule applies to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this rule from the time the used oil enters and until the time it exits Indiana.

(c) Unless trucks previously used to transport hazardous waste are emptied as described in 40 CFR 261.7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of 329 IAC 13-3-1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(d) Used oil transporters who conduct the following activities are also subject to other applicable provisions of this article:

(1) Transporters who generate used oil must also comply with 329 IAC 13-4.

(2) Transporters who process or re-refine used oil, except as provided in 329 IAC 13-6-2 [section 2 of this rule], must also comply with 329 IAC 13-7.

(3) Transporters who burn off-specification used oil for energy recovery must also comply with 329 IAC 13-8.

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 329 IAC 13-3-2, must also comply with 329 IAC 13-9.

(5) Transporters who dispose of used oil must also comply with 329 IAC 13-10.

(*Solid Waste Management Board; 329 IAC 13-6-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1499; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-6-2 Restrictions on transporters who are not also processors or re-refiners

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. (a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in subsection (b), used oil transporters may not process used oil unless they also comply with the requirements for processors and re-refiners in 329 IAC 13-7.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, such as settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor or re-refiner requirements in 329 IAC 13-7.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor or re-refiner requirements in 329 IAC 13-7. *(Solid Waste Management Board; 329 IAC 13-6-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1499; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-6-3 Notification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 3. (a) Used oil transporters who have not previously complied with the notification requirements of RCRA Section 3010 must comply with this article and obtain an EPA identification number.

(b) A used oil transporter requiring an EPA identification number who has not received an EPA identification number shall obtain one by notifying the commissioner of their used oil activity by submitting a completed EPA Form 8700-12, Notification of Regulated Waste Activity Report. To request EPA Form 8700-12, call the department at (317) 232-7956. Completed forms shall be mailed to the Indiana Department of Environmental Management, Office of Land Quality, P.O. Box 7035, Indianapolis, Indiana 46207-7035. *(Solid Waste Management Board; 329 IAC 13-6-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1500; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-6-4 Used oil transportation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 33 CFR 153.203; 49 CFR 171 through 49 CFR 180

Sec. 4. (a) A used oil transporter must deliver all used oil received to:

- (1) another used oil transporter, provided that the transporter has obtained an EPA identification number;
- (2) a used oil processing or re-refining facility that has obtained an EPA identification number;
- (3) an off-specification used oil burner facility that has obtained an EPA identification number; or
- (4) an on-specification used oil burner facility.

(b) Used oil transporters must comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 49 CFR 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR 171 through 49 CFR 180.

(c) Used oil discharges must be handled as follows:

(1) In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment, including:

- (A) notifying local authorities; and
- (B) diking the discharge area.

(2) If a discharge of used oil occurs during transportation and a government official acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(3) An air, rail, highway, or water transporter who has discharged used oil must do the following:

- (A) Give notice, if required by 49 CFR 171.15, to the National Response Center, (800) 424-8802 or (202) 426-2675.
- (B) Report, in writing, as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.
- (C) Communicate a spill report in accordance with 327 IAC 2-6.1.

(4) A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203.

(5) A transporter must clean up any used oil discharged that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

(Solid Waste Management Board; 329 IAC 13-6-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1500; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-6-5 Rebuttable presumption for used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261

Sec. 5. (a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below one thousand (1,000) parts per million.

(b) The transporter must make this determination by:

(1) testing the used oil; or

(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII. EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(3), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the transporter for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-6-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1500; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-6-6 Used oil storage at transfer facilities

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 112; 40 CFR 264; 40 CFR 265; 40 CFR 280

Sec. 6. (a) In addition to the requirements of this rule, used oil transporters are also subject to the following:

(1) All applicable spill prevention, control, and countermeasures found at 40 CFR 112.

(2) The underground storage tank standards found at 40 CFR 280 for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste.

(3) All applicable regulations of the Indiana fire prevention and building safety commission.

(b) This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four (24) hours during the normal course of transportation and not longer than thirty-five (35) days. Transfer facilities that store used oil for more than thirty-five (35) days are subject to regulation under 329 IAC 13-7.

(c) Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under 40 CFR 264 or 40 CFR 265.

(d) Containers and aboveground tanks used to store used oil at transfer facilities must:

(1) be in good condition with no severe rusting, apparent structural defects, or deterioration; and

(2) not be leaking (no visible leaks).

(e) Containers used to store used oil at transfer facilities must be equipped with a secondary containment system and meet the following requirements:

(1) The secondary containment system must consist of, at a minimum:

(A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dikes, berms, or retaining walls; or

(B) an equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

(3) The secondary containment system must be able to contain either at least ten percent (10%) of the total volume of the containers used to store used oil or the volume of the largest container used to store used oil at the transfer facility, whichever

is greater.

(f) Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system and meet the following requirements:

- (1) The secondary containment system must consist of, at a minimum:
 - (A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
 - (B) an equivalent secondary containment system.
- (2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
- (3) The secondary containment system must be designed or operated to contain one hundred percent (100%) of the capacity of the largest tank within the secondary containment boundary.

(g) New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system and meet the following requirements:

- (1) The secondary containment system must consist of, at a minimum:
 - (A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dike, berm, or retaining wall; or
 - (B) an equivalent secondary containment system.
- (2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
- (3) The secondary containment system must be designed or operated to contain one hundred percent (100%) of the capacity of the largest tank within the secondary containment boundary.

(h) Requirements for labels shall be as follows:

- (1) Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil".
- (2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil".

(i) Upon detection of a release of used oil to the environment not subject to the requirements of 40 CFR 280 Subpart F, which has occurred after the effective date of this article, the owner or operator of a transfer facility must perform the following clean-up steps:

- (1) Stop the release.
- (2) Contain the released used oil.
- (3) Clean up and manage properly the released used oil and other materials.
- (4) Communicate a spill report in accordance with 327 IAC 2-6.1.
- (5) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(Solid Waste Management Board; 329 IAC 13-6-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1501; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1619; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470)

329 IAC 13-6-7 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 7. (a) Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include the following:

- (1) The name and address of the generator, transporter, or processor or re-refiner who provided the used oil for transport.
- (2) The EPA identification number, if applicable, of the generator, transporter, or processor or re-refiner who provided the used oil for transport.
- (3) The quantity of used oil accepted.
- (4) The date of acceptance.
- (5) Except for intermediate rail transporters, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor or re-refiner who provided the used oil for transport.

(b) Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor, re-refiner, or disposal facility. Records of each delivery must include the following:

- (1) The name and address of the receiving facility or transporter.
- (2) The EPA identification number of the receiving facility or transporter.
- (3) The quantity of used oil delivered.
- (4) The date of delivery.
- (5) Except for intermediate rail transporters, the signature, dated upon receipt of the used oil, of a representative of the

receiving facility or transporter.

(c) Used oil transporters must maintain the records described in subsection (b)(1) through (b)(4) for each shipment of used oil exported to any foreign country.

(d) The records described in this section must be maintained for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-6-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1502; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-6-8 Management of residues

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 8. Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in 329 IAC 13-3-1(e). (*Solid Waste Management Board; 329 IAC 13-6-8; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1502; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 7. Used Oil Processors and Re-Refiners

329 IAC 13-7-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 1. (a) This rule applies to owners and operators of facilities involved in the processing of used oil as defined in 329 IAC 13-2-14. This rule does not apply to either of the following:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in 329 IAC 13-6-2.

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in 329 IAC 13-8-2(b).

(b) Used oil processors or re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this article:

(1) Processors or re-refiners who generate used oil must also comply with 329 IAC 13-4.

(2) Processors or re-refiners who transport used oil must also comply with 329 IAC 13-6.

(3) Except as provided in this subdivision, processors or re-refiners who burn off-specification used oil for energy recovery must also comply with 329 IAC 13-8. Processors or re-refiners burning used oil for energy recovery under either of the following conditions are not subject to 329 IAC 13-8:

(A) The used oil is burned in an on-site space heater that meets the requirements of 329 IAC 13-4-4.

(B) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors or re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 329 IAC 13-3-2 must also comply with 329 IAC 13-9.

(5) Processors or re-refiners who dispose of used oil must comply with 329 IAC 13-10.

(*Solid Waste Management Board; 329 IAC 13-7-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1502; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-7-2 Notification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. (a) Used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA Section 3010 must comply with this article and obtain an EPA identification number.

(b) A used oil processor or re-refiner requiring an EPA identification number who has not received an EPA identification number shall obtain one by notifying the commissioner of their used oil activity by submitting a completed EPA Form 8700-12, Notification of Regulated Waste Activity Report. To request EPA Form 8700-12, call the department at (317) 232-7956. Completed forms shall be mailed to the Indiana Department of Environmental Management, Office of Land Quality, P.O. Box 7035, Indianapolis, Indiana 46207-7035. (*Solid Waste Management Board; 329 IAC 13-7-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1503; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-7-3 General facility standards

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 112; 40 CFR 1510

Sec. 3. (a) Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned, sudden, or nonsudden release of used oil to air, soil, or surface water that could threaten human health or the environment.

(2) All facilities must be equipped with the following unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment as specified:

(A) An internal communications or alarm system capable of providing immediate emergency instruction by voice or signal to facility personnel.

(B) A device, such as a telephone that is immediately available at the scene of operations or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams.

(C) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment.

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) There must be access to a communications or alarm system:

(A) whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in subdivision (2); and

(B) if there is ever just one (1) employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone immediately available at the scene of operation or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in subdivision (2).

(5) The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities shall be made as follows:

(A) The owner or operator must attempt to make the following arrangements, as appropriate, for the type of used oil handled at the facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with:

(AA) the layout of the facility;

(BB) properties of used oil handled at the facility and associated hazards;

(CC) places where facility personnel would normally be working;

(DD) entrances to roads inside the facility; and

(EE) possible evacuation routes.

(ii) Where more than one (1) police department and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police department and a specific fire department, and agreements with any others to provide support to the primary emergency authority.

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers.

(iv) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(B) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(b) Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) Each owner or operator must have a contingency plan for the facility. The contingency plan must be:

(A) designed to minimize hazards to human health and the environment from fires, explosions, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water; and

(B) carried out immediately whenever there is a fire, explosion, or release of used oil that could threaten human health or the environment.

(2) The contingency plan must contain the following:

(A) A description of the actions facility personnel must take to comply with this subsection in response to fires, explosions, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water at the facility.

- (B) A description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services under subsection (a)(6).
 - (C) An up-to-date list of names, addresses, and office and home phone numbers of all persons qualified to act as emergency coordinator as described in subdivision (6). Where more than one (1) person is listed, one (1) must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
 - (D) An up-to-date list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and internal and external alarm systems, and decontamination equipment, where this equipment is required. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.
 - (E) An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe the signal or signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by releases of used oil or fires.
- (3) If the owner or operator has already prepared a spill prevention, control, and countermeasures (SPCC) plan in accordance with 40 CFR 112, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this article.
- (4) A copy of the contingency plan and all revisions to the plan must be:
- (A) maintained at the facility; and
 - (B) submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.
- (5) The contingency plan must be reviewed, immediately amended, and redistributed to the entities identified in subdivision (4)(B), if necessary, whenever:
- (A) applicable regulations are revised;
 - (B) the plan fails in an emergency;
 - (C) the facility changes in its design, construction, operation, maintenance, or other circumstances:
 - (i) in a way that materially increases the potential for fires, explosions, or releases of used oil; or
 - (ii) changes the response necessary in an emergency;
 - (D) the list of emergency coordinators changes; or
 - (E) the list of emergency equipment changes.
- (6) At all times, there must be at least one (1) employee either on the facility premises or on call, who is available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with:
- (A) all aspects of the facility's contingency plan;
 - (B) all operations and activities at the facility;
 - (C) the location and characteristics of used oil handled;
 - (D) the location of all records within the facility; and
 - (E) the facility layout.

In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities include those listed in subdivision (7). Applicable responsibilities for the emergency coordinator vary, depending on factors, such as type and variety of used oil handled by the facility, and type and complexity of the facility.

- (7) Emergency procedures must be handled as follows:
- (A) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, must immediately:
 - (i) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - (ii) notify appropriate state or local agencies with designated response roles if their help is needed.
 - (B) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. This may be accomplished by observation or review of facility records of manifests and, if necessary, by chemical analysts.
 - (C) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion, such as:
 - (i) the effects of any toxic, irritating, or asphyxiating gases that are generated; or
 - (ii) the effects of any hazardous surface water run-offs from water of chemical agents used to control fire and heat-induced explosions.
 - (D) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten

- human health or the environment outside the facility, the emergency coordinator must report any findings as follows:
- (i) If the assessment indicated that evacuation of local areas may be advisable, immediate notification must be made to the Office of Land Quality, Indiana Department of Environmental Management, 100 North Senate Avenue, Indianapolis, Indiana 46206-6015, (317) 241-4336. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated.
 - (ii) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for the geographical area in the applicable regional contingency plan under 40 CFR 112 or the National Response Center using their twenty-four (24) hour toll free number, (800) 424-8802. The report must include the following:
 - (AA) Name and telephone number of reporter.
 - (BB) Name and address of facility.
 - (CC) Time and type of incident, such as release, fire, or explosion.
 - (DD) Name and quantity of material or materials involved, to the extent known.
 - (EE) The extent of injuries, if any.
 - (FF) The possible hazards to human health or the environment outside the facility.
- (E) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, the following:
- (i) Stopping processes and operation.
 - (ii) Collecting and containing released used oil.
 - (iii) Removing or isolating containers.
- (F) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure build up, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
- (G) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.
- (H) The emergency coordinator must ensure that, in the affected area or areas of the facility:
- (i) no waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until clean-up procedures are completed;
 - (ii) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed; and
 - (iii) the owner or operator must notify the commissioner, and appropriate state and local authorities, that the facility is in compliance with items (i) and (ii) before operations are resumed in the affected area or areas of the facility.
- (I) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen (15) days after the incident, the owner or operator must submit a written report on the incident to the commissioner. The report must include the following:
- (i) Name, address, and telephone number of the owner or operator.
 - (ii) Name, address, and telephone number of the facility.
 - (iii) Date, time, and type of incident, such as fire or explosion.
 - (iv) Name and quantity of material or materials involved.
 - (v) The extent of injuries, if any.
 - (vi) An assessment of actual or potential hazards to human health and the environment, where applicable.
 - (vii) Estimated quantity and disposition of recovered material that resulted from the incident.

(Solid Waste Management Board; 329 IAC 13-7-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1503; errata filed Feb 3, 1997, 9:15 a.m.: 20 IR 1593; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-7-4 Rebuttable presumption for used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261

Sec. 4. (a) To ensure that used oil managed at a processing or re-refining facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the owner or operator of a used oil processing or re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The owner or operator must make this determination by:

(1) testing the used oil; or

(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

- (1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.
- (2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(Solid Waste Management Board; 329 IAC 13-7-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1506; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-7-5 Used oil management

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 112; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 280

Sec. 5. (a) In addition to the requirements of this rule, used oil processors or re-refiners are also subject to the following:

- (1) All applicable spill prevention, control, and countermeasures found at 40 CFR 112.
- (2) The underground storage tank standards found at 40 CFR 280 for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste.
- (3) All applicable regulations of the Indiana fire prevention and building safety commission.
- (b) Used oil processors or re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under 40 CFR 264 or 40 CFR 265.
- (c) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must:
 - (1) be in good condition with no severe rusting, apparent structural defects, or deterioration; and
 - (2) not be leaking (no visible leaks).
- (d) Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system and meet the following requirements:
 - (1) The secondary containment system must consist of, at a minimum:
 - (A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dike, berm, or retaining wall;
 - or
 - (B) an equivalent secondary containment system.
 - (2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
 - (3) The secondary containment system must be able to contain either at least ten percent (10%) of the total volume of the containers used to store used oil or the volume of the largest container used to store used oil at processing or re-refining facilities, whichever is greater.
- (e) Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system and meet the following requirements:
 - (1) The secondary containment system must consist of, at a minimum:
 - (A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
 - (B) an equivalent secondary containment system.
 - (2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
 - (3) The secondary containment system must be designed or operated to contain one hundred percent (100%) of the capacity of the largest tank within the secondary containment boundary.
- (f) New aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system and meet the following requirements:
 - (1) The secondary containment system must consist of, at a minimum:
 - (A) dikes, berms, or retaining walls, and the floor must cover the entire area within the dike, berm, or retaining wall;

or

(B) an equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

(3) The secondary containment system must be designed or operated to contain one hundred percent (100%) of the capacity of the largest tank within the secondary containment boundary.

(g) Requirements for labels shall be as follows:

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil".

(h) Upon detection of a release of used oil to the environment not subject to the requirements of 40 CFR 280, Subpart F, which has occurred after the effective date of this article, an owner or operator must perform the following clean-up steps:

(1) Stop the release.

(2) Contain the released used oil.

(3) Clean up and manage properly the released used oil and other materials.

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(i) Requirements for closure shall be as follows:

(1) Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:

(A) At closure of a tank system, the owner or operator must remove or decontaminate:

(i) used oil residues in tanks;

(ii) contaminated containment system components;

(iii) contaminated soils; and

(iv) structures and equipment contaminated with used oil;

and manage them as hazardous waste unless the materials are not hazardous waste under 40 CFR 261.

(B) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in clause (A), then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements of 40 CFR 265.310 that apply to hazardous waste landfills.

(2) Owners and operators who store used oil in containers must comply with the following requirements:

(A) At closure, containers holding used oils or residues of used oil must be removed from the site.

(B) The owner or operator must remove or decontaminate:

(i) used oil residues;

(ii) contaminated containment system components;

(iii) contaminated soils; and

(iv) structures and equipment contaminated with used oil;

and manage them as hazardous waste unless the materials are not hazardous waste under 40 CFR 261.

(Solid Waste Management Board; 329 IAC 13-7-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1506; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1620; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470)

329 IAC 13-7-6 Analysis plan

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 260.20; 40 CFR 260.21; 40 CFR 261

Sec. 6. (a) Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of section 4 of this rule and, if applicable, 329 IAC 13-9-3. The owner or operator must keep the plan at the facility.

(b) At a minimum, the plan must specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination, the following requirements shall apply:

(A) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(i) one (1) of the sampling methods in 40 CFR 261 Appendix I; or

(ii) a method shown to be equivalent under 40 CFR 260.20 and 40 CFR 260.21.

(B) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site.

(C) The methods used to analyze used oil for the parameters specified in section 4 of this rule.

- (3) The type of information that will be used to determine the halogen content of the used oil.
- (c) At a minimum, the plan must specify the following if 329 IAC 13-9-3 is applicable:
 - (1) Whether sample analyses or other information will be used to make this determination.
 - (2) If sample analyses are used to make this determination, the following requirements shall apply:
 - (A) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:
 - (i) one (1) of the sampling methods in 40 CFR 261 Appendix I; or
 - (ii) a method shown to be equivalent under 40 CFR 260.20 and 40 CFR 260.21.
 - (B) Whether used oil will be sampled and analyzed prior to or after any processing or re-refining.
 - (C) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site.
 - (D) The methods used to analyze used oil for the parameters specified in 329 IAC 13-9-3.
- (3) The type of information that will be used to make the on-specification used oil fuel determination.

(Solid Waste Management Board; 329 IAC 13-7-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1507; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-7-7 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
 Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 7. (a) Used oil processors and re-refiners must keep a record of each used oil shipment accepted for processing or re-refining. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivered the used oil to the processor or re-refiner.
- (2) The name and address of the generator or processor or re-refiner from whom the used oil was sent for processing or re-refining.
- (3) The EPA identification number of the transporter who delivered the used oil to the processor or re-refiner.
- (4) The EPA identification number, if applicable, of the generator or processor or re-refiner from whom the used oil was sent for processing or re-refining.
- (5) The quantity of used oil accepted.
- (6) The date of acceptance.

(b) Used oil processor or re-refiners must keep a record of each shipment of used oil that is shipped to a used oil burner, processor, or re-refiner or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner, processor, or re-refiner or disposal facility.
- (2) The name and address of the burner, processor, or re-refiner or disposal facility who will receive the used oil.
- (3) The EPA identification number of the transporter who delivers the used oil to the burner, processor, or re-refiner or disposal facility.
- (4) The EPA identification number of the burner, processor, or re-refiner or disposal facility who will receive the used oil.
- (5) The quantity of used oil shipped.
- (6) The date of shipment.

(c) The records described in this section must be maintained for at least three (3) years. *(Solid Waste Management Board; 329 IAC 13-7-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1508; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-7-8 Operating record and reporting

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
 Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 8. (a) The owner or operator must keep at the facility a written operating record that contains the following information recorded, as it becomes available, and maintained in the operating record until closure of the facility:

- (1) Records and results of used oil analyses performed as described in the analysis plan required under section 6 of this rule.
- (2) Summary reports and details of all incidents that require implementation of the contingency plan as specified in section 3(b) of this rule.

(b) A used oil processor or re-refiner must report to the commissioner, in the form of a letter, on a biennial basis by March 1 of each even-numbered year, the following information concerning used oil activities during the previous calendar year:

- (1) The EPA identification number, name, and address of the processor or re-refiner.
- (2) The calendar year covered by the report.
- (3) The quantities of used oil accepted for processing or re-refining, and the manner in which the used oil is processed or re-

refined, including the specific processes employed.

(Solid Waste Management Board; 329 IAC 13-7-8; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1508; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-7-9 Off-site shipments of used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 9. Used oil processors or re-refiners who initiate shipments of used oil off-site must ship the used oil using a used oil transporter who has obtained an EPA identification number. *(Solid Waste Management Board; 329 IAC 13-7-9; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1509; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-7-10 Management of residues

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 10. Owners and operators who generate residues from the storage, processing, or re-finishing of used oil must manage the residues as specified in 329 IAC 13-3-1(e). *(Solid Waste Management Board; 329 IAC 13-7-10; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1509; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

Rule 8. Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

329 IAC 13-8-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 1. (a) This rule applies to used oil burners except as specified in this subsection. A used oil burner is a facility where used oil not meeting the specification requirements in 329 IAC 13-3-2 is burned for energy recovery in devices identified in section 2(a) of this rule. Facilities burning used oil for energy recovery under either of the following conditions are not subject to this rule:

- (1) The used oil is burned by the generator in an on-site space heater under 329 IAC 13-4-4.
- (2) The used oil is burned by a processor or re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(b) Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this article:

- (1) Burners who generate used oil must also comply with 329 IAC 13-4.
- (2) Burners who transport used oil must also comply with 329 IAC 13-6.
- (3) Except as provided in section 2(b) of this rule, burners who process or re-refine used oil must also comply with 329 IAC 13-7.
- (4) Burners who:
 - (A) direct shipments of off-specification used oil from their facility to a used oil burner; or
 - (B) first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 329 IAC 13-3-2;

must also comply with 329 IAC 13-9.

- (5) Burners who dispose of used oil must comply with 329 IAC 13-10.

(c) This rule does not apply to persons burning used oil that meets the used oil fuel specification of 329 IAC 13-3-2, provided that the burner complies with the requirements of 329 IAC 13-9. *(Solid Waste Management Board; 329 IAC 13-8-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1509; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-8-2 Restriction on burning

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 260.10; 40 CFR 264; 40 CFR 265

Sec. 2. (a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

- (1) Industrial furnaces identified in 40 CFR 260.10.
- (2) Boilers, as defined in 40 CFR 260.10, that are identified as follows:
 - (A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are

transformed into new products, including the component parts of products, by mechanical or chemical processes.

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(C) Used oil-fired space heaters provided that the burner meets the provisions of 329 IAC 13-4-4.

(3) Hazardous waste incinerators subject to regulation under 40 CFR 264 Subpart O or 40 CFR 265.

(b) With the exception described in this subsection, used oil burners may not process used oil unless they also comply with the requirements of 329 IAC 13-7. Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil. (*Solid Waste Management Board; 329 IAC 13-8-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1509; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-8-3 Notification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 3. (a) Used oil burners who have not previously complied with the notification requirements of RCRA Section 3010 must comply with this rule and obtain an EPA identification number.

(b) A used oil burner requiring an EPA identification number who has not received an EPA identification number shall obtain one by notifying the commissioner of their used oil activity by submitting a completed EPA Form 8700-12, Notification of Regulated Waste Activity Report. To request EPA Form 8700-12, call the department at (317) 232-7956. Completed forms shall be mailed to the Indiana Department of Environmental Management, Office of Land Quality, P.O. Box 7035, Indianapolis, Indiana 46207-7035. (*Solid Waste Management Board; 329 IAC 13-8-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1509; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-8-4 Rebuttable presumption for used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261

Sec. 4. (a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The used oil burner must determine if the used oil contains above or below one thousand (1,000) parts per million total halogens by:

(1) testing the used oil;

(2) applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) if the used oil has been received from a processor or refiner subject to regulation under 329 IAC 13-7, using information provided by the processor or re-refiner.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the burner for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-8-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1510; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-8-5 Used oil storage

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 112; 40 CFR 264; 40 CFR 265; 40 CFR 280

Sec. 5. (a) In addition to the requirements of this rule, used oil burners are also subject to the following:

- (1) All applicable spill prevention, control, and countermeasures found at 40 CFR 112.
- (2) The underground storage tank standards found at 40 CFR 280 for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste.
- (3) All applicable regulations of the Indiana fire prevention and building safety commission.
- (b) Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under 40 CFR

264 or 40 CFR 265.

(c) Containers and aboveground tanks used to store oil at burner facilities must:

- (1) be in good condition with no severe rusting, apparent structural defects, or deterioration; and
- (2) not be leaking (no visible leaks).

(d) Containers used to store used oil at burner facilities must be equipped with a secondary containment system. The secondary containment system must:

(1) consist of, at a minimum:

- (A) dikes, berms, or retaining walls; and
- (B) the floor must cover the entire area within the dike, berm, or retaining wall; and

(2) the entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

(3) The secondary containment system must be able to contain either at least ten percent (10%) of the total volume of the containers used to store used oil or the volume of the largest container used to store used oil at a burner facility, whichever is greater.

(e) Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system and meet the following requirements:

(1) The secondary containment system must consist of, at a minimum:

- (A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
- (B) an equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

(3) The secondary containment system must be designed or operated to contain one hundred percent (100%) of the capacity of the largest tank within the secondary containment boundary.

(f) New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system and meet the following requirements:

(1) The secondary containment system must consist of, at a minimum:

- (A) dikes, berms, or retaining walls, and a floor that must cover the entire area within the dike, berm, or retaining wall;
- or
- (B) an equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

(3) The secondary containment system must be designed or operated to contain one hundred percent (100%) of the capacity of the largest tank within the secondary containment boundary.

(g) Requirements for labels shall be as follows:

(1) Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil".

(h) Upon detection of a release of used oil to the environment not subject to the requirements of 40 CFR 280 Subpart F, which has occurred after the effective date of this article, a burner must perform the following clean-up steps:

- (1) Stop the release.
- (2) Contain the released used oil.
- (3) Clean up and manage properly the released used oil and other materials.
- (4) Communicate a spill report in accordance with 327 IAC 2-6.1.

(5) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(Solid Waste Management Board; 329 IAC 13-8-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1510; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1622; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470)

329 IAC 13-8-6 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 6. (a) Used oil burners must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivered the used oil to the burner.
- (2) The name and address of the generator or processor or re-refiner from whom the used oil was sent to the burner.
- (3) The EPA identification number of the transporter who delivered the used oil to the burner.
- (4) The EPA identification number, if applicable, of the generator or processor or re-refiner from whom the used oil was sent to the burner.
- (5) The quantity of used oil accepted.
- (6) The date of acceptance.

(b) The records described in this section must be maintained for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-8-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1511; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-8-7 Notices

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 7. (a) Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor or re-refiner, the burner must provide to the generator, transporter, or processor or re-refiner a one (1) time written and signed notice certifying the following:

- (1) The burner has notified EPA stating the location and general description of the burner's used oil management activities.
- (2) The burner will burn the used oil only in an industrial furnace or boiler identified in section 2(a) of this rule.

(b) The certification described in this section must be maintained for three (3) years from the date the burner last receives shipment of off-specification used oil from that:

- (1) generator;
- (2) transporter; or
- (3) processor or re-refiner.

(*Solid Waste Management Board; 329 IAC 13-8-7; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1511; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-8-8 Management of residues

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 8. Burners who generate residues from the storage or burning of used oil must manage the residues as specified in 329 IAC 13-3-1(e). (*Solid Waste Management Board; 329 IAC 13-8-8; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1512; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 9. Used Oil Fuel Marketers

329 IAC 13-9-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 1. (a) Any person who conducts either of the following activities is subject to the requirements of this rule:

- (1) Directs a shipment of off-specification used oil from their facility to a used oil burner.
- (2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 329 IAC 13-3-2.

(b) The following persons are not marketers subject to this rule:

- (1) Used oil generators and transporters who transport used oil received only from generators unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors and re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors or re-refiners who incidentally

burn used oil are not marketers subject to this rule.

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of 329 IAC 13-3-2.

(c) Any person subject to the requirements of this rule must also comply with one (1) of the following:

(1) 329 IAC 13-4, used oil generators.

(2) 329 IAC 13-6, used oil transporters and transfer facilities.

(3) 329 IAC 13-7, used oil processors and re-refiners.

(4) 329 IAC 13-8, used oil burners who burn off-specification used oil for energy recovery.

(Solid Waste Management Board; 329 IAC 13-9-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1512; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-9-2 Prohibitions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(1) has an EPA identification number; and

(2) burns the used oil in an industrial furnace or boiler identified in 329 IAC 13-8-2(a).

(Solid Waste Management Board; 329 IAC 13-9-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1512; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 13-9-3 On-specification used oil fuel

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 3. (a) A:

(1) generator;

(2) transporter;

(3) processor or re-refiner; or

(4) burner;

may determine that used oil that is to be burned for energy recovery meets the fuel specifications of 329 IAC 13-3-2 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(b) A:

(1) generator;

(2) transporter;

(3) processor or re-refiner; or

(4) burner;

who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under 329 IAC 13-3-2, must keep copies of analyses of the used oil or other information used to make the determination for three (3) years. *(Solid Waste Management Board; 329 IAC 13-9-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1512; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-9-4 Notification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 4. (a) A used oil fuel marketer subject to the requirements of this rule who has not previously complied with the notification requirements of RCRA Section 3010 must comply with this rule and obtain an EPA identification number.

(b) A marketer requiring an EPA identification number who has not received an EPA identification number shall obtain one by notifying the commissioner of their used oil activity by submitting a completed EPA Form 8700-12, Notification of Regulated Waste Activity Report. To request EPA Form 8700-12, call the department at (317) 232-7956. Completed forms shall be mailed to the Indiana Department of Environmental Management, Office of Land Quality, P.O. Box 7035, Indianapolis, Indiana 46207-7035. *(Solid Waste Management Board; 329 IAC 13-9-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1512; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 13-9-5 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. (a) Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner.
- (2) The name and address of the burner who will receive the used oil.
- (3) The EPA identification number of the transporter who delivers the used oil to the burner.
- (4) The EPA identification number of the burner.
- (5) The quantity of used oil shipped.
- (6) The date of shipment.

(b) A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under 329 IAC 13-3-2 must keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment.
- (2) The quantity of used oil fuel delivered.
- (3) The date of shipment or delivery.
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under section 3(a) of this rule.

(c) The records described in this section must be maintained for at least three (3) years. (*Solid Waste Management Board; 329 IAC 13-9-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-9-6 Notices

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 6. (a) Before a used oil generator, transporter, or processor or re-refiner directs the first shipment of off-specification used oil fuel to a burner, the used oil generator, transporter, or processor or re-refiner must obtain a one (1) time written and signed notice from the burner certifying the following:

- (1) The burner has notified EPA or the department stating the location and general description of used oil management activities.
- (2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in 329 IAC 13-8-2(a).

(b) The certification described in this section must be maintained for three (3) years from the date the last shipment of off-specification used oil is shipped to the burner. (*Solid Waste Management Board; 329 IAC 13-9-6; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 10. Dust Suppressant and Disposal of Used Oil

329 IAC 13-10-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 1. The requirements of this rule apply to all used oils that cannot be recycled and are therefore being disposed. (*Solid Waste Management Board; 329 IAC 13-10-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-10-2 Disposal

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. (a) Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this article must be managed in accordance with the hazardous waste management requirements of 329 IAC 3.1.

(b) Used oils that are not hazardous wastes and cannot be recycled under this article must be disposed in accordance with the requirements of 329 IAC 10. (*Solid Waste Management Board; 329 IAC 13-10-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; errata filed Feb 3, 1997, 9:15 a.m.: 20 IR 1593; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 13-10-3 Use as a dust suppressant

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30-2-1

Sec. 3. The use of used oil as a dust suppressant is prohibited in accordance with IC 13-30-2-1(14). (*Solid Waste Management Board; 329 IAC 13-10-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

ARTICLE 14. (RESERVED)

ARTICLE 15. WASTE TIRE MANAGEMENT

Rule 1. General Provisions

329 IAC 15-1-1 Applicability

Authority: IC 13-19-3-1; IC 13-20-13-11; IC 13-20-14-6

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) This article applies to the following:

(1) Waste tire processing operations.

(2) Waste tire storage sites.

(3) Waste tire transporters.

(b) This article does not apply to the following:

(1) A facility that:

(A) recycles or reuses waste tires; and

(B) operates under a valid solid waste processing facility permit issued by the department under 329 IAC 11.

(2) A site where waste tires are stored in conjunction with a recycling program approved by the department.

(3) A site that is used to retread tires at which fewer than five thousand (5,000) waste tires are present indoors within a completely enclosed structure.

(4) A vehicle or container in which waste tires are stored for less than thirty (30) days.

(5) Storage of waste tires in a vehicle that is:

(A) properly licensed by the bureau of motor vehicles; and

(B) capable of legally transporting waste tires;

in which the waste tires are completely enclosed.

(6) Transformed, new, or remanufactured tires.

(7) Waste tires in pieces less than two (2) inches in any dimension that are stored in compliance with the rules of the fire prevention and building safety commission.

(8) Other uses of waste tires approved by the commissioner under one (1) of the following:

(A) 329 IAC 10-3-1(13).

(B) 329 IAC 11-3-1(15).

(C) 329 IAC 12-3-1(15).

(*Solid Waste Management Board; 329 IAC 15-1-1; filed Oct 10, 2000, 3:10 p.m.: 24 IR 317*)

329 IAC 15-1-2 Enforcement

Authority: IC 13-19-3-1; IC 13-20-13-11; IC 13-20-14-6

Affected: IC 13-14-2-6; IC 13-14-10; IC 13-20-13-5.5; IC 13-20-14; IC 13-30-2; IC 13-30-3; IC 36-9-30

Sec. 2. This article is enforced under the following:

(1) IC 13-14-2-6.

(2) IC 13-14-10.

(3) IC 13-20-13-5.5.

(4) IC 13-20-14-5.6.

(5) IC 13-20-14-7.

(6) IC 13-20-14-8.

(7) IC 13-30-3.

(*Solid Waste Management Board; 329 IAC 15-1-2; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

329 IAC 15-1-3 Penalties

Authority: IC 13-19-3-1; IC 13-20-13-11; IC 13-20-14-6

Affected: IC 13-20-14-2; IC 13-30-2; IC 13-30-4; IC 13-30-5; IC 13-30-6; IC 13-30-7; IC 36-9-30

Sec. 3. (a) Penalties for violation of this article are provided for at IC 13-30-4, IC 13-30-5, IC 13-30-6, and IC 13-30-7.

(b) The penalty for a knowing violation of 329 IAC 15-6-1 is provided for at IC 13-20-14-2(c). (*Solid Waste Management Board; 329 IAC 15-1-3; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

329 IAC 15-1-4 Variances

Authority: IC 13-19-3-1; IC 13-20-13-11; IC 13-20-14-6
Affected: IC 13-14-8-8; IC 13-30-2; IC 36-9-30

Sec. 4. The commissioner may grant a variance from compliance with provisions of this article in accordance with IC 13-14-8-8. (*Solid Waste Management Board; 329 IAC 15-1-4; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

Rule 2. Definitions

329 IAC 15-2-1 Applicability

Authority: IC 13-19-3-1; IC 13-20-13-11; IC 13-20-14-6
Affected: IC 13-11-2; IC 13-30-2; IC 36-9-30

Sec. 1. The definitions in IC 13-11-2 apply to this article. In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article. (*Solid Waste Management Board; 329 IAC 15-2-1; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

329 IAC 15-2-2 "Altered waste tire" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. "Altered waste tire" means a waste tire that has been modified so that the tire cannot hold water by:

- (1) shredding;
- (2) chopping;
- (3) drilling with holes and stacking to assure drainage; or
- (4) slitting longitudinally and stacking so the tires will not collect water.

(*Solid Waste Management Board; 329 IAC 15-2-2; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

329 IAC 15-2-3 "Customer" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 3. "Customer" means a person who purchases at least one (1) new tire from a dealer. (*Solid Waste Management Board; 329 IAC 15-2-3; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

329 IAC 15-2-4 "Disease vectors" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 4. "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting micro-organisms and disease to humans and other animals. (*Solid Waste Management Board; 329 IAC 15-2-4; filed Oct 10, 2000, 3:10 p.m.: 24 IR 318*)

329 IAC 15-2-5 "Nuisance" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. "Nuisance" means one (1) or more of the following:

- (1) Fugitive dust as defined in the rules of the air pollution control board at 326 IAC 6-4-1.
- (2) Disease vectors.
- (3) Uncontrolled litter.
- (4) Odors.
- (5) Fire.
- (6) Fire hazard, evidenced by an order from the state fire marshal that the waste tire storage site or waste tire processing

operation is not in compliance with the Indiana Fire Code as adopted by the fire prevention and building safety commission at 675 IAC 22.

(Solid Waste Management Board; 329 IAC 15-2-5; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319; errata filed Oct 23, 2000, 9:50 a.m.: 24 IR 688)

329 IAC 15-2-6 “Operator” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. “Operator” means the person or persons responsible for the operation of all or part of a waste tire storage site or waste tire processing operation. *(Solid Waste Management Board; 329 IAC 15-2-6; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)*

329 IAC 15-2-7 “Owner” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. “Owner” means the person who owns all or part of a waste tire storage site or waste tire processing operation. *(Solid Waste Management Board; 329 IAC 15-2-7; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)*

329 IAC 15-2-8 “Passenger tire equivalent” or “PTE” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 8. (a) “Passenger tire equivalent” or “PTE” means one (1) tire weighing twenty-five (25) pounds with a volume of:

(1) four (4) cubic feet for whole waste tires; or

(2) one and twenty-five hundredths (1.25) cubic feet for altered waste tires.

(b) If both the weight and the volume of the waste tires are known, then the weight of the tires must be used to determine the number of PTEs. *(Solid Waste Management Board; 329 IAC 15-2-8; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)*

329 IAC 15-2-9 “Remanufactured tire” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 9. “Remanufactured tire” means a waste tire that:

(1) has been recapped, retreaded, or regrooved; and

(2) has not been placed on the wheel of a motor vehicle.

(Solid Waste Management Board; 329 IAC 15-2-9; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)

329 IAC 15-2-10 “Run-off” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 10. “Run-off” means any water or other liquid that drains over land from any part of the waste tire storage site or waste tire processing operation. *(Solid Waste Management Board; 329 IAC 15-2-10; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)*

329 IAC 15-2-11 “Storage” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-11-2-147; IC 13-30-2; IC 36-9-30

Sec. 11. (a) “Storage” means the accumulation of waste tires in a manner that does not constitute disposal of the waste tires.

(b) Storage of waste tires, at a site that is not registered in accordance with this article, for more than six (6) months is open dumping as defined at IC 13-11-2-147. *(Solid Waste Management Board; 329 IAC 15-2-11; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)*

329 IAC 15-2-12 “Transformed tire” defined

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. "Transformed tire" means a waste tire that has been manufactured into a usable commodity other than a tire that meets the following:

- (1) The transformed tire:
 - (A) is not capable of holding accumulations of water; or
 - (B) is stacked, packaged, boxed, containerized, or enclosed to prevent accumulation of water or precipitation in the tire.
- (2) A market for the commodity exists as demonstrated by contracts, orders, purchase requests, requests for bids, or similar documentation.

(Solid Waste Management Board; 329 IAC 15-2-12; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319)

329 IAC 15-2-13 "Used tire" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 13. "Used tire" means a tire that meets all of the following criteria:

- (1) The tire is suitable for use on a motor vehicle as follows:
 - (A) The tire has two thirty-seconds ($\frac{2}{32}$) inch of remaining tread, or the tire wear bars are not exposed.
 - (B) The tire has no cuts, slashes, or exposed cord.
- (2) The tire is stored in a rack, stack, or row.
- (3) The tire is stored out of the weather to prevent accumulation of water or precipitation in the tires.

(Solid Waste Management Board; 329 IAC 15-2-13; filed Oct 10, 2000, 3:10 p.m.: 24 IR 319; errata filed Oct 23, 2000, 9:50 a.m.: 24 IR 688)

329 IAC 15-2-14 "Wholesaler" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 14. "Wholesaler" means a person who sells new tires at wholesale in Indiana. *(Solid Waste Management Board; 329 IAC 15-2-14; filed Oct 10, 2000, 3:10 p.m.: 24 IR 320)*

329 IAC 15-2-15 "Whole waste tire" defined

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 15. "Whole waste tire" means a waste tire that is not an altered waste tire or a material derived from waste tires. *(Solid Waste Management Board; 329 IAC 15-2-15; filed Oct 10, 2000, 3:10 p.m.: 24 IR 320)*

Rule 3. Waste Tire Storage Sites and Waste Tire Processing Operations

329 IAC 15-3-1 Applicability

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. This rule applies to owners and operators of waste tire storage sites and waste tire processing operations. *(Solid Waste Management Board; 329 IAC 15-3-1; filed Oct 10, 2000, 3:10 p.m.: 24 IR 320)*

329 IAC 15-3-2 Requirements for waste tire storage sites

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 2. The owner or operator of a waste tire storage site shall:

- (1) possess a valid certificate of registration issued under this rule;
- (2) comply with all applicable requirements of this rule; and
- (3) maintain financial assurance as required by 329 IAC 15-5.

(Solid Waste Management Board; 329 IAC 15-3-2; filed Oct 10, 2000, 3:10 p.m.: 24 IR 320)

329 IAC 15-3-3 Registration of waste tire storage sites

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-20-21-3; IC 13-30-2; IC 36-9-30

Sec. 3. (a) An application for registration of a waste tire storage site must be submitted on a form provided by the department. The completed application form must contain all information requested on the form. The following must be submitted with the application form:

- (1) A United States Geological Survey (USGS) seven and one-half (7½) minute topographic map or equivalent that shows the boundaries of the waste tire storage site.
- (2) A legible map of the waste tire storage site that shows:
 - (A) property boundaries;
 - (B) on-site buildings;
 - (C) location, length, width, and height of each waste tire storage area; and
 - (D) separation distances between waste tire piles.
- (3) A description of the buildings, signs, notices, and alarms to be used for management of waste tires at the facility.
- (4) A description of the program that will be used to manage waste tires at the facility, including the following:
 - (A) The anticipated sources and amounts of incoming waste tires.
 - (B) The names and locations of the anticipated destinations of the waste tires.
 - (C) The method and schedule for draining incoming waste tires.
 - (D) The method and schedule for preventing waste tires from accumulating water.
- (5) The contingency plan required by section 18 of this rule.
- (6) The closure cost estimate required by 329 IAC 15-5-3.
- (7) Evidence of the financial assurance mechanism to be used to comply with the financial assurance requirements in 329 IAC 15-5.
- (8) The application fee required by IC 13-20-21-3.

(b) Before beginning storage of waste tires, the person who applies for a certificate of registration for a waste tire storage site shall submit a copy of the map of the waste tire storage site required by subsection (a)(2) to the fire department with jurisdiction over the waste tire storage site.

(c) A separate certificate of registration is required for each waste tire storage site.

(d) A new certificate of registration is required for a waste tire storage site that is relocated. (*Solid Waste Management Board; 329 IAC 15-3-3; filed Oct 10, 2000, 3:10 p.m.: 24 IR 320*)

329 IAC 15-3-4 Fees for waste tire storage sites

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 4. The owner or operator of a waste tire storage site shall pay the fees required by IC 13-20-21. (*Solid Waste Management Board; 329 IAC 15-3-4; filed Oct 10, 2000, 3:10 p.m.: 24 IR 321*)

329 IAC 15-3-5 Requirements for waste tire processing operations

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. The owner or operator of a waste tire processing operation shall:

- (1) possess a valid certificate of registration issued under this rule; and
- (2) comply with all applicable requirements of this rule.

(*Solid Waste Management Board; 329 IAC 15-3-5; filed Oct 10, 2000, 3:10 p.m.: 24 IR 321*)

329 IAC 15-3-6 Registration of waste tire processing operations

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-20-21-3; IC 13-30-2; IC 36-9-30

Sec. 6. (a) An application for registration of a waste tire processing operation must be completed on a form provided by the department. The completed application form must contain all information requested on the form. The following must be submitted with the application form:

- (1) A United States Geological Survey seven and one-half (7½) minute topographic map or equivalent that shows the boundaries of the waste tire processing operation.

- (2) A legible map of the waste tire processing operation that shows the following:
 - (A) Property boundaries.
 - (B) On-site buildings.
 - (C) Location, length, width, and height of each waste tire storage area.
 - (D) Separation distances between waste tire piles.
- (3) A description of the buildings, signs, notices, and alarms to be used to manage waste tires at the facility.
- (4) A description of the program that will be used to manage waste tires at the facility, including the following:
 - (A) The anticipated sources and amounts of incoming waste tires.
 - (B) The names and locations of the anticipated destinations of the waste tires.
 - (C) The method and schedule for draining incoming waste tires.
 - (D) The method and schedule for preventing waste tires from accumulating water.
- (5) The contingency plan required by section 18 of this rule.
- (6) The application fee required by IC 13-20-21-3.
- (b) A separate certificate of registration is required for each waste tire processing operation.
- (c) A new certificate of registration is required for a waste tire processing operation that is relocated. *(Solid Waste Management Board; 329 IAC 15-3-6; filed Oct 10, 2000, 3:10 p.m.: 24 IR 321; errata filed Oct 23, 2000, 9:50 a.m.: 24 IR 688)*

329 IAC 15-3-7 Fees for waste tire processing operations

Authority: IC 13-19-3-1; IC 13-20-13-11
 Affected: IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 7. The owner or operator of a waste tire processing operation shall pay the fees required by IC 13-20-21. *(Solid Waste Management Board; 329 IAC 15-3-7; filed Oct 10, 2000, 3:10 p.m.: 24 IR 321)*

329 IAC 15-3-8 Action on application

Authority: IC 13-19-3-1; IC 13-20-13-11
 Affected: IC 13-30-2; IC 36-9-30

Sec. 8. (a) The department issues a certificate of registration to a person who owns or operates a waste tire storage site that meets the following criteria:

- (1) The owner or operator has submitted a completed application in accordance with section 3 of this rule.
- (2) The waste tire storage site complies with the requirements of this article.
- (3) The owner or operator has established financial assurance in compliance with 329 IAC 15-5.

(b) The department issues a certificate of registration to a person who owns or operates a waste tire processing operation that meets the following criteria:

- (1) The owner or operator has submitted a completed application in accordance with section 6 of this rule.
- (2) The waste tire processing operation complies with the requirements of this article.

(Solid Waste Management Board; 329 IAC 15-3-8; filed Oct 10, 2000, 3:10 p.m.: 24 IR 321)

329 IAC 15-3-9 Conditions included in a certificate of registration

Authority: IC 13-19-3-1; IC 13-20-13-11
 Affected: IC 13-20-13; IC 13-30-2; IC 36-9-30

Sec. 9. The commissioner may include conditions in a certificate of registration that ensure compliance with IC 13-20-13 and this article, including a compliance schedule. The owner or operator of a waste tire storage site or waste tire processing operation shall comply with all conditions included in the certificate of registration. *(Solid Waste Management Board; 329 IAC 15-3-9; filed Oct 10, 2000, 3:10 p.m.: 24 IR 321)*

329 IAC 15-3-10 Denial of certificate of registration

Authority: IC 13-19-3-1; IC 13-20-13-11
 Affected: IC 13-20-13-3; IC 13-30-2; IC 36-9-30

Sec. 10. The department may deny an application for a certificate of registration under this rule as provided for in IC 13-20-13-3(d). *(Solid Waste Management Board; 329 IAC 15-3-10; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)*

329 IAC 15-3-11 Revocation or modification of certificate of registration

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-20-13-5.5; IC 13-30-2; IC 36-9-30

Sec. 11. The commissioner may revoke or modify a certificate of registration as provided for at IC 13-20-13-5.5. *(Solid Waste Management Board; 329 IAC 15-3-11; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)*

329 IAC 15-3-12 Duration

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 12. A certificate of registration issued under this rule expires on the earlier of the following dates:

- (1) Five (5) years after the date the certificate is issued.
- (2) The date the department notifies the owner or operator that final closure has been completed in accordance with section 21 of this rule.

(Solid Waste Management Board; 329 IAC 15-3-12; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)

329 IAC 15-3-13 Transferability

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 13. (a) A certificate of registration issued under this rule is not transferable to another person.

(b) A certificate of registration is valid only for the location described in the application for the certificate of registration.

(Solid Waste Management Board; 329 IAC 15-3-13; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)

329 IAC 15-3-14 Renewal

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 14. (a) The owner or operator of a waste tire storage site or waste tire processing operation shall submit an application for renewal of a certificate of registration at least sixty (60) days before the expiration date of the certificate.

(b) An application for renewal of a certificate of registration for a waste tire storage site must comply with section 3 of this rule.

(c) An application for renewal of a certificate of registration for a waste tire processing operation must comply with section 6 of this rule. *(Solid Waste Management Board; 329 IAC 15-3-14; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)*

329 IAC 15-3-15 Information submitted annually by a waste tire storage site

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 15. The owner or operator of a waste tire storage site shall submit the following to the department no later than January 31 of each year:

- (1) The annual operation fee required by IC 13-20-21.
- (2) The revised closure cost estimate required by 329 IAC 15-5-3(b).
- (3) The annual tire summary required by section 20 of this rule.

(Solid Waste Management Board; 329 IAC 15-3-15; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)

329 IAC 15-3-16 Updating information

Authority: IC 13-19-3-1; IC 13-20-13-11
Affected: IC 13-30-2; IC 36-9-30

Sec. 16. If the information provided in the application for the certificate of registration changes, the owner or operator of a waste tire storage site or waste tire processing operation shall provide the current information to the department no more than thirty (30) days after the information provided in the application for the certificate of registration changes. *(Solid Waste Management Board; 329 IAC 15-3-16; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)*

329 IAC 15-3-17 Waste tire management requirements

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 17. (a) The owner or operator of a waste tire storage site or a waste tire processing operation shall operate that waste tire storage site or a waste tire processing operation in compliance with this section at all times.

(b) All wastewater from the waste tire storage site or waste tire processing operation must be discharged in accordance with the rules of the water pollution control board at 327 IAC 5 and 327 IAC 15. If wastewater is discharged to an on-site system, the system must be approved in accordance with the rules of the Indiana state department of health at 410 IAC 6-10.

(c) The waste tire storage site or waste tire processing operation must not do any of the following:

- (1) Pose a threat to human health or the environment.
- (2) Create a nuisance.

(d) Access to the waste tire storage site or waste tire processing operation must be allowed only when operating personnel are on duty. Access by persons who are not employees must be supervised at all times by the owner, the operator, or an employee of the waste tire storage site or waste tire processing operation.

(e) Subsection (d) does not apply to persons employed or contracted by federal, state, or local government agencies.

(f) A sign must be posted at each point of access to the waste tire storage site or waste tire processing operation from a public road. Each sign must be at least sixteen (16) square feet in size. Each sign must indicate all of the following:

- (1) The name of the waste tire storage site or waste tire processing operation.
- (2) The certificate of registration number.
- (3) Whether the facility is a waste tire storage site or a waste tire processing operation.
- (4) The operating hours or schedule.
- (5) The schedule of fees charges by the waste tire storage site or waste tire processing operation.
- (6) The name and telephone number of a designated emergency contact person to be contacted in case of an emergency.
- (g) The designated emergency contact person required by subsection (f)(6) must be the following:

(1) Authorized to respond to a reported emergency or be capable of contacting a person authorized to respond to a reported emergency; and

(2) One (1) of the following:

- (A) The owner or operator, or an employee or contractor of the owner or operator, of the waste tire storage site or waste tire processing operation.
- (B) The emergency response coordinator required by section 19 of this rule.
- (C) An answering service that can contact the emergency response coordinator required by subsection (f)(6).
- (D) For a municipally owned facility, a local emergency agency and telephone number may be used.

(h) The waste tire storage site or waste tire processing operation must maintain the following at the waste tire storage site or waste tire processing operation:

- (1) A first aid kit.
- (2) Fire extinguishing equipment that complies with the Indiana Fire Code as adopted by the fire prevention and building safety commission at 675 IAC 22.
- (3) A telephone or other communication system capable of contacting the fire department and other emergency services.

(i) Salvaging must not interfere with the operation of the waste tire storage site or waste tire processing operation or create a nuisance or a health hazard.

(j) The owner or operator of a waste tire storage site or waste tire processing operation shall take all actions required to:

- (1) prevent the breeding of mosquitoes; and
- (2) control any mosquito population.

(k) Waste tires must not be accepted from a waste tire transporter that is not registered with the department in accordance with this article.

(l) The owner or operator of a waste tire storage site or waste tire processing operation shall prevent water from accumulating in waste tires by doing the following:

(1) Waste tires must be drained:

- (A) on the day of receipt; and
- (B) as necessary thereafter to prevent accumulation of water in the waste tires.

(2) Within seven (7) days after receipt, whole waste tires must be altered, covered, or otherwise prevented from accumulating water.

(3) Waste tires must not be stored in areas of standing water.

(Solid Waste Management Board; 329 IAC 15-3-17; filed Oct 10, 2000, 3:10 p.m.: 24 IR 322)

329 IAC 15-3-18 Contingency plan

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 18. (a) The owner or operator of a waste tire storage site or a waste tire processing operation shall develop a contingency plan that complies with this section and is designed to minimize the hazards to human health and the environment from:

- (1) fires or explosions;
- (2) run-off resulting from fires or explosions; and
- (3) mosquitoes that may breed in water accumulations in waste tires.

(b) The contingency plan must include the following:

(1) A description of the specific actions that site personnel must take in response to:

- (A) fires or explosions;
- (B) run-off resulting from fires or explosions; and
- (C) mosquito breeding in waste tires.

(2) A list of the agencies to be notified in case of fire, explosion, or other emergency, with the telephone number of each agency. This list must include:

- (A) the fire department with jurisdiction for the site;
- (B) the county and municipal law enforcement agencies that have jurisdiction over the site;
- (C) the department; and
- (D) the office of the state fire marshal.

(3) A statement that the entities listed in subdivision (2) will be notified immediately after discovery of one (1) of the conditions listed in subdivision (1).

(4) A description of the methods to be used to control mosquito breeding in waste tires.

(5) The name and title of the emergency response coordinator.

(6) The telephone numbers used to contact the emergency response coordinator, and any other methods, such as alternate telephone numbers and pager numbers, to be used to contact the emergency response coordinator.

(7) The duties of the emergency response coordinator.

(c) A copy of the contingency plan and all revisions to the plan must be:

(1) maintained at the waste tire storage site or waste tire processing operation, or at an alternate location approved by the department in the certificate of registration; and

(2) submitted to all of the following within thirty (30) days of the date the certificate of registration is issued or the date the contingency plan is amended under subsection (e):

- (A) The department.
- (B) The fire department with jurisdiction over the waste tire storage site or waste tire processing operation.

(d) The contingency plan must be carried out immediately whenever there is:

- (1) a fire, explosion, or run-off resulting from a fire or explosion; or
- (2) evidence of mosquitos or other disease vectors breeding in waste tires.

(e) The owner or operator of the waste tire storage site or waste tire processing operation shall review and amend the contingency plan within thirty (30) days if any of the following occurs:

- (1) A change in the operation of the waste tire storage site or waste tire processing operation requires a change in the actions required to control the hazards listed in subsection (a).
- (2) The actions described in the plan fail to control the emergency situation when implemented.
- (3) All or part of the contingency plan must be implemented in a manner different than described in the plan in an emergency.
- (4) The list of emergency response coordinators changes.
- (5) The department identifies deficiencies in the contingency plan and directs the owner or operator in writing to revise the contingency plan.

(Solid Waste Management Board; 329 IAC 15-3-18; filed Oct 10, 2000, 3:10 p.m.: 24 IR 323)

329 IAC 15-3-19 Emergency response coordinator

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 19. (a) The owner or operator of the waste tire storage site or waste tire processing operation shall ensure that at all times there is one (1) person responsible for coordinating all emergency response measures at the waste tire storage site or waste tire processing operation. If the owner or operator designates more than one (1) person to carry out this responsibility, each person designated must meet the requirements of this section.

(b) An emergency response coordinator must:

- (1) be at the waste tire storage site or waste tire processing operation or on call at all times;
- (2) coordinate all emergency response measures carried out by the waste tire storage site or waste tire processing operation;
- (3) be familiar with:
 - (A) all aspects of the contingency plan;
 - (B) the identity and telephone numbers of the fire department and other emergency services that have jurisdiction over the site;
 - (C) all operations and activities at the site;
 - (D) the layout of the waste tire storage site or waste tire processing operation; and
 - (E) the location of all records required by section 20 of this rule; and
- (4) have authority to commit resources needed to implement the contingency plan.

(Solid Waste Management Board; 329 IAC 15-3-19; filed Oct 10, 2000, 3:10 p.m.: 24 IR 324)

329 IAC 15-3-20 Record keeping and reporting

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-20-13-5; IC 13-30-2; IC 36-9-30

Sec. 20. (a) The owner or operator of a waste tire storage site or a waste tire processing operation shall keep the following records:

- (1) Copies of the transporter manifest forms prepared in accordance with 329 IAC 15-4-14.
- (2) A copy of the certificate of registration.

(b) The owner or operator of a waste tire storage site or waste tire processing operation shall submit an annual tire summary to the department by January 31 of each year. The annual tire summary must cover the preceding calendar year. The annual tire summary must be submitted on the following form and must include all information requested on the form:

[See following page for form.]

SOLID WASTE MANAGEMENT BOARD

ANNUAL TIRE SUMMARY
 Indiana Department of Environmental Management
 Use of this form is required by 329 IAC 15-3-20(b) and IC 13-20-13-5.

Section A. Facility Information

Name:	Registration Number:
Mailing Address: Street	City State Zip Code
Facility Contact Person:	Telephone Number (include area code):

Section B. Reporting Time Period

January 1 through December 31, 20____

Section C. Tire Summary Information for the Calendar Year

Number of Waste Tires _____ (Check unit of measure used)
 Received at this Facility: whole waste tires cubic yards cubic feet pounds PTEs

Number of Waste Tires Disposed of by this Facility:
 (Use these units: whole waste tires, cubic yards, cubic feet, pounds, PTEs)

Number	Unit	Destination	Disposal Method

Number of Whole Waste Tires Remaining in Storage	Number of Waste Tire Pieces Remaining in Storage
Passenger Tire Equivalents (PTEs) _____	Passenger Tire Equivalents (PTEs) _____

Section D. Conversion Factors

Tire Pieces						Whole Tires		
<u>multiply</u>	<u>by</u>	<u>to obtain</u>	<u>multiply</u>	<u>by</u>	<u>to obtain</u>	<u>multiply</u>	<u>by</u>	<u>to obtain</u>
pounds	0.04	PTE	cubic feet	0.8	PTE	cubic feet	0.25	PTE
PTE	25	pounds	cubic yards	21.6	PTE	cubic yards	6.75	PTE
			PTE	1.25	cubic feet	PTE	4	cubic feet
			PTE	0.046	cubic yards	PTE	0.15	cubic yards

Section E. Certification

I certify that the information in this summary is true, accurate, and complete to the best of my knowledge.

Authorized Signature _____	Title _____	Date _____
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- (c) The annual tire summary must be signed by:
- (1) the owner or operator; or
 - (2) a person designated by the owner or operator who is responsible for preparing and reviewing those documents as part of the person's duties in the regular course of business.

- (d) The owner or operator of the waste tire storage site or waste tire processing operation shall:
- (1) keep a copy of all waste tire manifests received from waste tire transporters for one (1) year; and
 - (2) make the waste tire manifests available at the waste tire storage site or waste tire processing operation during normal business hours for inspection and photocopying by the department.

(Solid Waste Management Board; 329 IAC 15-3-20; filed Oct 10, 2000, 3:10 p.m.: 24 IR 324)

329 IAC 15-3-21 Final closure

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 21. (a) Final closure of a waste tire storage site or waste tire processing operation is completed when all of the following occur:

- (1) All storage and processing of waste tires has stopped.
- (2) All equipment used in the waste tire storage site or waste tire processing operation has been removed.
- (3) All waste tires have been:
 - (A) collected;
 - (B) removed from the site; and
 - (C) disposed of properly in accordance with this article.

- (4) All solid waste resulting from:
 - (A) operation of the waste tire storage site or waste tire processing operation; and
 - (B) any fire or explosion at the waste tire storage site or waste tire processing operation;has been disposed of properly.

(b) The commissioner notifies the owner or operator of the waste tire storage site in writing that final closure has been completed and financial responsibility required by 329 IAC 15-5 is no longer required to be maintained. *(Solid Waste Management Board; 329 IAC 15-3-21; filed Oct 10, 2000, 3:10 p.m.: 24 IR 326)*

Rule 4. Waste Tire Transporters

329 IAC 15-4-1 Requirements for waste tire transporters

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-4; IC 13-30-2; IC 36-9-30

Sec. 1. (a) A person who transports waste tires shall:

- (1) register with the department as a waste tire transporter;
- (2) hold a valid certificate of registration issued under this rule;
- (3) comply with this article; and
- (4) comply with any conditions in the certificate of registration.

(b) The requirements for registration of waste tire transporters in this rule do not apply to a person who operates a municipal waste collection and transportation vehicle licensed under IC 13-20-4. *(Solid Waste Management Board; 329 IAC 15-4-1; filed Oct 10, 2000, 3:10 p.m.: 24 IR 326)*

329 IAC 15-4-2 Registration

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 2. (a) An application for registration as a waste tire transporter must be completed on a form provided by the department. The application must include the following information:

- (1) The name of the person applying for registration as a waste tire transporter.
- (2) The address of the applicant's principal office.
- (3) The address of any offices maintained by the applicant in Indiana.
- (4) Evidence of financial assurance that complies with 329 IAC 15-5.

(b) The fee required by IC 13-20-21 must be submitted with the application form when the application form is submitted to the commissioner. *(Solid Waste Management Board; 329 IAC 15-4-2; filed Oct 10, 2000, 3:10 p.m.: 24 IR 326)*

329 IAC 15-4-3 Fees

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 3. A waste tire transporter shall pay the fee required by IC 13-20-21. (*Solid Waste Management Board; 329 IAC 15-4-3; filed Oct 10, 2000, 3:10 p.m.: 24 IR 326*)

329 IAC 15-4-4 Action on application

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-30-2; IC 36-9-30

Sec. 4. The commissioner issues a certificate of registration to a waste tire transporter who:

- (1) submits a complete application for a certificate of registration;
- (2) establishes and maintains financial assurance in compliance with 329 IAC 15-5; and
- (3) complies with this rule and any conditions included in the certificate of registration.

(*Solid Waste Management Board; 329 IAC 15-4-4; filed Oct 10, 2000, 3:10 p.m.: 24 IR 326*)

329 IAC 15-4-5 Conditions included in certificate of registration

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-30-2; IC 36-9-30

Sec. 5. The commissioner may include, in a certificate of registration, conditions that ensure compliance with IC 13-20-14 and this article, including a compliance schedule. A waste tire transporter shall comply with each condition included in the certificate of registration. (*Solid Waste Management Board; 329 IAC 15-4-5; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-6 Denial of certificate of registration

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-20-14-5; IC 13-30-2; IC 36-9-30

Sec. 6. The commissioner may deny an application for a certificate of registration as provided for in IC 13-20-14-5(h). (*Solid Waste Management Board; 329 IAC 15-4-6; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-7 Revocation or modification of certificate of registration

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-20-14-5.6; IC 13-30-2; IC 36-9-30

Sec. 7. The commissioner may revoke or modify a certificate of registration as provided for at IC 13-20-14-5.6. (*Solid Waste Management Board; 329 IAC 15-4-7; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-8 Duration

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-30-2; IC 36-9-30

Sec. 8. A certificate of registration issued to a waste tire transporter under this rule expires on the earlier of the following dates:

- (1) Five (5) years after the date the certificate is issued.
- (2) The date the department notifies the waste tire transporter under 329 IAC 15-5-12 that financial assurance is no longer required to be maintained.

(*Solid Waste Management Board; 329 IAC 15-4-8; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-9 Transferability

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-30-2; IC 36-9-30

Sec. 9. A certificate of registration issued under this rule is not transferable to another waste tire transporter. (*Solid Waste Management Board; 329 IAC 15-4-9; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-10 Renewal

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-30-2; IC 36-9-30

Sec. 10. An application for renewal of a certificate of registration must be submitted sixty (60) days before the expiration date of the certificate. An application for renewal of a certificate of registration must comply with section 2 of this rule. (*Solid Waste Management Board; 329 IAC 15-4-10; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-11 Change of information

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-30-2; IC 36-9-30

Sec. 11. (a) A waste tire transporter shall:

- (1) notify the department in writing at least thirty (30) days before changing:
 - (A) the business location of the waste tire transporter; or
 - (B) the destination facility for waste tires; and
- (2) obtain approval from the department before changing subdivision (1)(A) or (1)(B).

(b) If any information provided in the application for the certificate of registration changes, other than the information listed in subsection (a), the waste tire transporter shall provide the current information to the department no more than thirty (30) days after the information changes. (*Solid Waste Management Board; 329 IAC 15-4-11; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-12 Disposal of waste tires by waste tire transporters

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-20-14-4; IC 13-30-2; IC 36-9-30

Sec. 12. A waste tire transporter may dispose of waste tires only as provided for in IC 13-20-14-4. (*Solid Waste Management Board; 329 IAC 15-4-12; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327*)

329 IAC 15-4-13 Manifest forms

Authority: IC 13-19-3-1; IC 13-20-14-6
Affected: IC 13-20-14-5; IC 13-30-2; IC 36-9-30

Sec. 13. (a) A waste tire transporter shall prepare a manifest for each load of waste tires using the following form:

[See following page for form.]

WASTE TIRE MANIFEST
 Indiana Department of Environmental Management
 Use of this form is required by 329 IAC 15-4-13 and IC 13-20-14-5.

GENERATOR					
Generator Name _____ Mailing Address _____ City _____ State _____ Zip Code _____ Telephone Number (including area code) _____	Shipment Origin _____ Location Address _____ City _____ State _____ Zip Code _____ Telephone Number (including area code) _____				
Description of Shipment: Material: _____ (Whole tires, Shredded tires, etc.) If whole tires, how many of each type: Passenger car tires _____ Truck tires _____ Other tires _____ If shredded tires, approximate weight (in tons) _____ or volume (in cubic yards) _____					
Generator's Authorized Agent _____		Signature _____		Date of Shipment _____	
TRANSPORTER					
Registration No. _____ Transporter Name: _____ Address: _____ City _____ State _____ Zip Code _____			Telephone: (_____) _____ Driver's Name: _____		
THE TRANSPORTER MUST GIVE A COMPLETED COPY OF THIS FORM TO THE GENERATOR.					
I CERTIFY THAT THE MATERIAL DESCRIBED ABOVE WAS PICKED UP AT THE SITE DESCRIBED ABOVE.					
Driver's Signature _____				Date of Pickup _____	
DESTINATION					
Site Name: _____ Address: _____ City _____ State _____ Zip Code _____			Telephone: (_____) _____ Permit/Registration No. _____ State: _____		
I CERTIFY THAT THE MATERIAL DESCRIBED ABOVE HAS BEEN ACCEPTED AND, TO THE BEST OF MY KNOWLEDGE, THIS INFORMATION IS TRUE AND ACCURATE.					
Name of Authorized Agent _____		Signature _____		Receipt Date _____	

THE WASTE TIRE TRANSPORTER MUST COMPLETE THIS FORM FOR EACH SHIPMENT OF WASTE TIRES.

- (b) A waste tire transporter shall do the following:
- (1) Carry the manifest in the vehicle while transporting the waste tires described on the manifest.
 - (2) Retain a copy of the manifest for one (1) year.
 - (3) Provide a copy of the manifest to:
 - (A) the waste tire generator; and
 - (B) the waste tire storage site or waste tire processing operation that receives the waste tires.
 - (4) Make a copy of the manifest available to the department upon request.

(Solid Waste Management Board; 329 IAC 15-4-13; filed Oct 10, 2000, 3:10 p.m.: 24 IR 327)

329 IAC 15-4-14 Reports

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-30-2; IC 36-9-30

Sec. 14. (a) A waste tire transporter shall report annually to the department the number of waste tires, in passenger tire equivalents, transported by the waste tire transporter during the previous year.

(b) The annual report:

(1) is due on January 31;

(2) must cover the previous calendar year; and

(3) must be submitted with the annual registration fee required by section 3 of this rule.

*(Solid Waste Management Board; 329 IAC 15-4-14; filed Oct 10, 2000, 3:10 p.m.: 24 IR 329)***329 IAC 15-4-15 Records**

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-30-2; IC 36-9-30

Sec. 15. A waste tire transporter shall keep the following at the place of business described in the certificate of registration:

(1) Copies of manifest forms required to be maintained by section 13(b) of this rule.

(2) The certificate of registration.

*(Solid Waste Management Board; 329 IAC 15-4-15; filed Oct 10, 2000, 3:10 p.m.: 24 IR 329)***Rule 5. Financial Assurance****329 IAC 15-5-1 Financial assurance for waste tire storage sites**

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. The owner or operator of a waste tire storage site shall do the following:

(1) Prepare and submit to the department a closure cost estimate in accordance with section 3 of this rule.

(2) Maintain financial assurance for removal of waste tires, in an amount equal to or greater than the closure cost estimate, using one (1) of the following mechanisms:

(A) A trust fund in accordance with section 5 of this rule.

(B) A surety bond in accordance with section 6 of this rule.

(C) A letter of credit in accordance with section 7 of this rule.

(D) Insurance in accordance with section 8 of this rule.

(3) Maintain financial assurance for removal of waste tires as required by this rule until the department notifies the owner or operator of the waste tire storage site that final closure has been completed in accordance with 329 IAC 15-3-21.

*(Solid Waste Management Board; 329 IAC 15-5-1; filed Oct 10, 2000, 3:10 p.m.: 24 IR 329)***329 IAC 15-5-2 Financial assurance for waste tire transporters**

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-14; IC 13-30-2; IC 36-9-30

Sec. 2. A waste tire transporter shall maintain financial assurance in the amount of at least ten thousand dollars (\$10,000). The financial assurance must be in the form of:

(1) a bond for performance, executed by a corporate surety licensed to do business in Indiana, in accordance with section 9 of this rule;

(2) a negotiable certificate of deposit in accordance with section 10 of this rule; or

(3) a negotiable letter of credit in accordance with section 11 of this rule;

payable to the department and conditional upon faithful compliance with IC 13-20-14 and this article. *(Solid Waste Management Board; 329 IAC 15-5-2; filed Oct 10, 2000, 3:10 p.m.: 24 IR 329)***329 IAC 15-5-3 Closure cost estimate**

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. (a) The owner or operator of a waste tire storage site shall submit to the department a written estimate of the cost of

completing final closure of the site in accordance with 329 IAC 15-3-21. The original closure cost estimate must be submitted, on a form provided by the department, with the application for a certificate of registration. The closure cost estimate must include the following:

- (1) The methods that will be used to remove and properly dispose of all waste tires stored at the site.
- (2) The final destination of all waste tires removed from the site.
- (3) The name and address of the contractor or contractors to be used to remove the waste tires and complete final closure of the site.
- (4) The estimated cost of completing all activities required by 329 IAC 15-3-21.
- (b) The owner or operator of a waste tire storage site shall submit to the department a revised written closure cost estimate:
 - (1) annually, no later than January 31 of each year; and
 - (2) whenever a change in the removal plan increases the closure cost estimate.

The revised closure cost estimate must meet the requirements of subsection (a).

(c) The closure cost estimate must be based on the larger of the following:

- (1) The cost of removing all waste tires, calculated in passenger tire equivalents, accumulated at the site.
- (2) The cost of removing the maximum number of waste tires, calculated in passenger tire equivalents, that the owner or operator anticipates will be accumulated at the site at any time.

(d) The closure cost estimate must be based on the projected costs of contracting a third party to complete final closure of the site. The closure cost estimate must include all costs for all activities required by 329 IAC 15-3-21.

(e) Once the owner or operator of a waste tire storage site has completed an activity required in 329 IAC 15-3-21, the owner or operator may:

- (1) revise the closure cost estimate indicating that the activity has been completed; and
- (2) revise that element of the closure cost estimate to zero (0).

(Solid Waste Management Board; 329 IAC 15-5-3; filed Oct 10, 2000, 3:10 p.m.: 24 IR 329)

329 IAC 15-5-4 Use of financial mechanism for multiple sites

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. (a) The owner or operator of a waste tire storage site may use a single financial responsibility mechanism to meet the requirements for more than one (1) facility. Evidence of financial responsibility submitted to the department must include a list showing, for each facility:

- (1) the registration number of the waste tire storage site;
- (2) name and address of the waste tire storage site; and
- (3) the amount of funds available in the financial mechanism.

(b) The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each waste tire storage site. *(Solid Waste Management Board; 329 IAC 15-5-4; filed Oct 10, 2000, 3:10 p.m.: 24 IR 330)*

329 IAC 15-5-5 Trust fund

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. (a) The owner or operator of a waste tire storage site may comply with this section by establishing a trust agreement on:

- (1) forms provided by the department; or
- (2) other forms approved by the department.

(b) Each trust agreement must do the following:

- (1) Identify facilities and corresponding closure cost estimates covered by the trust agreement.
- (2) Establish a trust fund, in an amount determined by section 3 of this rule, that guarantees that payments from that fund either:

- (A) reimburse the owner or operator of the waste tire storage site for department-approved closure work done; or
- (B) pay the department for doing required closure work.

- (3) Require that annual valuations of the trust be submitted to the department.
- (4) Require successor trustees to notify the department, in writing, of their appointment at least ten (10) days before the effective date of the appointment.
- (5) Require the trustee to notify the department, in writing, of the failure of the owner or operator of the waste tire storage site to make a required payment into the fund.
- (6) Establish that the trust is irrevocable unless terminated, in writing, with the approval of the:

- (A) owner or operator of the waste tire storage site;
 - (B) trustee; and
 - (C) department.
- (7) Certify that the signer of the trust agreement for the owner or operator of the waste tire storage site was duly authorized to bind the owner or operator of the waste tire storage site.
- (8) All signatures must be notarized by a notary public commissioned to be a notary public in Indiana at the time of the notarization.
- (9) Establish that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal or state of Indiana agency.
- (10) Require that annual payments into the fund be made within thirty (30) days of each anniversary of the initial payment.
- (c) Payments into the trust must be made as follows:
- (1) The owner or operator of the waste tire storage site shall make a payment into the trust fund each year during the pay-in period.
 - (2) The maximum pay-in period is five (5) years. The pay-in period commences on the date the site first receives waste tires.
 - (3) Annual payments are determined by the following formula:

$$\text{Annual Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = Current cost estimate.
CV = Current value of the trust fund.
Y = Number of years remaining in the pay-in period.

- (4) The owner or operator of the waste tire storage site shall make the initial payment before the beginning of the pay-in period. The owner or operator of the waste tire storage site shall also, before the beginning of the pay-in period, submit to the department a receipt from the trustee for this first annual payment.
- (5) Subsequent payments must be made no later than thirty (30) days after each anniversary of the first payment.
- (6) The owner or operator of the waste tire storage site may accelerate payments into the trust fund or may deposit the full amount of the current cost estimate at the time the fund is established.
- (7) The owner or operator of the waste tire storage site shall maintain the value of the fund at no less than the value would have been if annual payments were made as specified in subdivision (3).
- (8) If the owner or operator of the waste tire storage site establishes a trust fund after having used one (1) or more alternative mechanisms, the first payment must be in at least the amount the fund would contain if the trust fund were established initially and payments made as provided in subdivision (3).
- (d) The trustee shall evaluate the trust fund annually, as of the day the trust was created or on such earlier date as may be provided in the agreement. The trustee shall notify the owner or operator of the waste tire storage site and the department within thirty (30) days after the evaluation date.
- (e) Release of excess funds may be requested as follows:
 - (1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator of the waste tire storage site may submit a written request to the department for release of the amount in excess of the current cost estimate.
 - (2) Within sixty (60) days after receiving a request from the owner or operator of the waste tire storage site for a release of funds, the department shall instruct the trustee to release to the owner or operator of the waste tire storage site such funds as the department specifies in writing to be in excess of the current cost estimate.
- (f) Reimbursement for removal expenses may be requested as follows:
 - (1) After initiating removal, the owner or operator of the waste tire storage site, or any other person authorized to perform removal, may request reimbursement for removal expenditures by submitting itemized bills to the department.
 - (2) Within sixty (60) days after receiving the itemized bills for removal activities, the department shall determine whether the expenditures are in accordance with the removal plan. The department shall instruct the trustee to make reimbursement in such amounts as the department specifies in writing in accordance with the removal plan.
 - (3) If the department determines, based on available information, that the cost of removal will be greater than the value of the trust fund, the department shall withhold reimbursement of such amounts necessary to accomplish removal until it is determined that the owner or operator of the waste tire storage site is no longer required to maintain financial assurance for removal. In the event the fund is inadequate to pay all claims, the department shall pay claims according to the following priority:
 - (A) A person with whom the department has contracted to perform removal activities.
 - (B) A person who has completed removal authorized by the department.
 - (C) A person who has completed work that furthered the removal.
 - (D) The owner or operator of the waste tire storage site and related business entities.

(Solid Waste Management Board; 329 IAC 15-5-5; filed Oct 10, 2000, 3:10 p.m.: 24 IR 330)

329 IAC 15-5-6 Surety bond

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. (a) The owner or operator of a waste tire storage site may comply with this rule by establishing a surety bond on:

- (1) forms provided by the department; or
- (2) other forms approved by the department.

(b) All surety bonds must contain the following:

- (1) The establishment of penal sums in the amount determined by section 3 of this rule.
- (2) Provision that the surety will be liable to fulfill the closure obligations upon notice from the department that the owner or operator of the waste tire storage site has failed to do so.
- (3) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator of the waste tire storage site and the department at least one hundred twenty (120) days before the effective date of the cancellation.
- (4) Provision that the owner or operator of the waste tire storage site may not terminate the bond without prior written authorization by the department.

(c) The owner or operator of the waste tire storage site shall establish a standby trust fund to be utilized in the event the owner or operator of the waste tire storage site fails to fulfill closure obligations and the bond guarantee is exercised. Such a trust fund must be established in accordance with section 5 of this rule.

(d) The surety company issuing the bond must be among those listed as acceptable sureties for federal bonds in the most recent Circular 570 of the United States Department of the Treasury.

(e) The surety will not be liable for deficiencies in the performance of closure by the owner or operator of the waste tire storage site after the department releases the owner or operator in accordance with section 12 of this rule. *(Solid Waste Management Board; 329 IAC 15-5-6; filed Oct 10, 2000, 3:10 p.m.: 24 IR 331)*

329 IAC 15-5-7 Letter of credit

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. (a) The owner or operator of a waste tire storage site may comply with this rule by establishing a letter of credit on:

- (1) forms provided by the department; or
- (2) forms approved by the department.

(b) All letters of credit must contain the following:

- (1) The establishment of credit in the amount determined by section 3 of this rule.
- (2) Irrevocability.
- (3) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the owner or operator and the department at least one hundred twenty (120) days before the effective date of cancellation.
- (4) Provision that, upon written notice from the commissioner, the institution issuing the letter of credit will:
 - (A) state that the obligations of the owner or operator of the waste tire storage site have not been fulfilled; and
 - (B) deposit funds equal to the amount of credit into a trust fund to be used to ensure closure obligations of the owner or operator are fulfilled.

(c) The owner or operator of the waste tire storage site shall establish a standby trust fund to be utilized in the event the owner or operator of the waste tire storage site fails to fulfill closure obligations and the letter of credit is utilized. Such a trust fund must be established in accordance with section 5 of this rule.

(d) The issuing institution must be an entity that has the authority to issue letters of credit and whose letters of credit operations are regulated and examined by a federal or state of Indiana agency. *(Solid Waste Management Board; 329 IAC 15-5-7; filed Oct 10, 2000, 3:10 p.m.: 24 IR 332)*

329 IAC 15-5-8 Insurance

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 8. (a) The owner or operator of a waste tire storage site may comply with this rule by providing evidence of insurance on:

- (1) forms provided by the department; or

- (2) other forms approved by the department.
- (b) All insurance must include the following requirements:
 - (1) The establishment of credit in the amount determined by section 3 of this rule.
 - (2) Provision that the insurer shall make payments:
 - (A) in any amount, not to exceed the amount insured; and
 - (B) to any person authorized by the department;

if the department notifies the insurer in writing that the owner or operator of the waste tire storage site has failed to perform final closure.

(3) Provision that the owner or operator of the waste tire storage site shall maintain the policy in full force and effect unless the department consents in writing to termination of the policy.

(4) Provision that the insurer may not cancel, terminate, or fail to renew the policy unless the owner or operator of the waste tire storage site fails to pay the premium. No cancellation, termination, or failure to renew may occur unless the department and the owner or operator of the waste tire storage site are notified by the insurer in writing at least one hundred twenty (120) days before such event.

(c) The insurer shall either be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one (1) or more states. (*Solid Waste Management Board; 329 IAC 15-5-8; filed Oct 10, 2000, 3:10 p.m.: 24 IR 332*)

329 IAC 15-5-9 Bond for performance

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-13-8; IC 13-30-2; IC 36-9-30

Sec. 9. (a) A waste tire transporter may comply with this rule by establishing a performance bond on:

- (1) forms provided by the department; or
- (2) other forms approved by the department.
- (b) All performance bonds must contain the following:

(1) The establishment of penal sums in the amount of at least ten thousand dollars (\$10,000).

(2) Provision that the surety will be liable to fulfill the obligations of the waste tire transporter upon notice from the department that the waste tire transporter has failed to fulfill all obligations of this article.

(3) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the waste tire transporter and the department at least one hundred twenty (120) days before the effective date of the cancellation.

(4) Provision that the waste tire transporter may not terminate the bond without prior written authorization by the department.

(5) Provision that the surety will pay to the department, for deposit in the waste tire management fund established by IC 13-20-13-8, the entire amount of the penal sum described in subdivision (1) in the event the waste tire transporter fails to fulfill all obligations under this article.

(c) The waste tire transporter shall establish a standby trust fund to be utilized in the event the waste tire transporter fails to fulfill all obligations under this article and the bond guarantee is exercised. Such a trust fund must be established in accordance with section 5 of this rule.

(d) The surety company issuing the bond must be among those listed as acceptable sureties for federal bonds in the most recent Circular 570 of the United States Department of the Treasury.

(e) The surety will not be liable for deficiencies in the performance of the waste tire transporter after the department releases the waste tire transporter in accordance with section 12 of this rule. (*Solid Waste Management Board; 329 IAC 15-5-9; filed Oct 10, 2000, 3:10 p.m.: 24 IR 332*)

329 IAC 15-5-10 Negotiable certificate of deposit

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-13-8; IC 13-30-2; IC 36-9-30

Sec. 10. (a) A waste tire transporter may comply with this rule by establishing a negotiable certificate of deposit that meets the requirements of this section.

(b) A negotiable certificate of deposit must contain the following:

(1) A principal amount of not less than ten thousand dollars (\$10,000).

(2) Provision that the certificate of deposit may not be withdrawn by the waste tire transporter unless released in writing by the department under section 12 of this rule.

(3) The principal must be deposited for a period of at least one (1) year, with automatic redeposit thereafter for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the waste tire transporter and the department at least one hundred twenty (120) days before the date on which the certificate of deposit matures.

(4) Provision that the certificate of deposit must be payable to the department, for deposit in the waste tire management fund established by IC 13-20-13-8, upon written notice from the commissioner, stating that obligations of the waste tire transporter under this article have not been fulfilled.

(c) The issuing institution must be an entity that has the authority to issue certificates of deposit and whose operations are regulated and examined by a federal agency or an agency or department of the state. (*Solid Waste Management Board; 329 IAC 15-5-10; filed Oct 10, 2000, 3:10 p.m.: 24 IR 333*)

329 IAC 15-5-11 Negotiable letter of credit

Authority: IC 13-19-3-1; IC 13-20-14-6

Affected: IC 13-20-13-8; IC 13-30-2; IC 36-9-30

Sec. 11. (a) A waste tire transporter may comply with this rule by establishing a negotiable letter of credit on:

(1) forms provided by the department; or

(2) forms approved by the department.

(b) All negotiable letters of credit must contain the following:

(1) The establishment of credit in the amount of not less than ten thousand dollars (\$10,000).

(2) Irrevocability.

(3) An effective period of at least one (1) year and automatic extensions thereafter for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the waste tire transporter and the department at least one hundred twenty (120) days before the effective date of cancellation.

(4) Provision that the institution will deposit funds equal to the amount of credit into the waste tire management fund established by IC 13-20-13-8 to be used to ensure that all obligations of the waste tire transporter under this article are fulfilled, if notified in writing by the commissioner that the obligations of the waste tire transporter have not been fulfilled.

(c) The waste tire transporter shall establish a standby trust fund to be utilized in the event the waste tire transporter fails to fulfill all obligations under this article and the letter of credit is utilized. Such a trust fund must be established in accordance with the requirements of section 5 of this rule.

(d) The issuing institution must be an entity that has the authority to issue letters of credit and whose letters of credit operations are regulated and examined by a federal agency or an agency or department of the state. (*Solid Waste Management Board; 329 IAC 15-5-11; filed Oct 10, 2000, 3:10 p.m.: 24 IR 333*)

329 IAC 15-5-12 Release of financial responsibility obligations

Authority: IC 13-19-3-1; IC 13-20-13-11

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. (a) When the requirements for final closure in 329 IAC 15-3-21 have been completed, the department will notify the owner or operator of the waste tire storage site in writing that financial responsibility is no longer required to be maintained.

(b) When a waste tire transporter has:

(1) stopped transporting waste tires for a period of one hundred eighty (180) days; and

(2) completed all activities required by the department under this article;

the department will notify the waste tire transporter in writing that financial responsibility is no longer required to be maintained. (*Solid Waste Management Board; 329 IAC 15-5-12; filed Oct 10, 2000, 3:10 p.m.: 24 IR 333*)

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